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In the Supreme Court of the United States

OCTOBER TERM, 1956

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA

BRIEF FOR THE UNITED STATES IN SUPPORT OF MOTION FOR JUDGMENT

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Letter from Pedro Cevallos, Spanish Foreign Minister, to Charles Pinckney and James Monroe, American Envoys April 13, 1805, *American State Papers*, 2 Foreign Relations, 662 119
Letter from Senator Tom Connally, Chairman, Senate Foreign Relations Committee, to Dean Acheson, Secretary of State, October 12, 1949, Senate Interior Committee Hearings on S. J. Res. 13, 83d Cong., 1st Sess., 319 56

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Letter from Louis de Onis, Spanish Ambassador, to John Quincy Adams, Secretary of State, December 29, 1817, *American State Papers*, 4 Foreign Relations, 453 120

Letter from Louis de Onis, Spanish Ambassador, to John Quincy Adams, Secretary of State, March 23, 1818, *American State Papers*, 4 Foreign Relations, 484 120

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Letter from Hamilton Fish, Secretary of State, to Sir Edward Thornton, British Minister, January 22, 1875, *Foreign Relations of the United States*, 1875, Pt. I, 649–650 46

Letter from Thomas Jefferson, Secretary of State, to Edmond Genet, French Minister, November 8, 1793, *American State Papers*, 1 Foreign Relations, 183 ... 39, 69

Letter from Thomas Jefferson, Secretary of State, to George Hammond, British Minister, November 8, 1793, H. Exec. Doc. 324, 42d Cong., 2d Sess., 553, 1 Moore, *Dig. Int. L.* 702 ..... 39, 41

Letter from Robert Lansing, Acting Secretary of State, to Macchi di Cellere, Italian Ambassador, November 28, 1914, *Foreign Relations of the United States*, 1914, Supp., 665, 1 Hackworth, *Dig. Int. L.* 637–638 52

Letter from A. P. Miceli, Assistant Attorney General of Louisiana, to William G. Rankin, Louisiana Commissioner of Conservation, December 8, 1937, *Reports and Opinions of the Attorney General of Louisiana from April 1, 1936, to April 1, 1938*, p. 959. 153

Letter from Robert W. Moore, Assistant Secretary of State, to Josephus Daniels, Ambassador to Mexico, May 23, 1936, 1 Hackworth, *Dig. Int. L.* 640–641. 147, 148

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Letter from James O'Connor, Assistant Attorney General of Louisiana, to L. J. Neuman, September 21, 1934, *Reports and Opinions of the Attorney General of Louisiana from April 1, 1934, to April 1, 1936*, p. 685 152–153

Letter from Timothy Pickering, Secretary of State, to the Lieutenant Governor of Virginia, September 2, 1796, 1 Moore, *Dig. Int. L.* 704 42

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Letter from William Seward, Secretary of State, to Gideon Welles, Secretary of the Navy, September 3, 1863, 1 Moore, *Dig. Int. L.* 730 46

Letter from James E. Webb, Under Secretary of State, to Senator Tom Connally, Chairman, Senate Foreign Relations Committee, December 30, 1949, Senate Interior Committee Hearings on S. J. Res. 13, 83d Cong., 1st Sess., 321–323 56–57

Letter from Huntington Wilson, Assistant Secretary of State, to F. M. Wilmot, Manager of the Carnegie Hero Fund Commission, June 16, 1909, 1 Hackworth, *Dig. Int. L.* 634, 99 Cong. Rec. 3622 51

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Lippincott's Gazetteer of the World (Heilprin ed., 1922) 1740 124

Macmillan's Modern Dictionary (1938), 1152 124

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Memorandum for the United States on the Regime of the High Seas, January 6, 1950, U. N. General Assembly, A/CN.4/19 (23 March 1950) 104 57
1 Moore, *Digest of International Law* (1906), 101 142
6 Moore, *Federal Practice* (2d ed. 1953), 2085 81
Murray's New English Dictionary, Vol. 9, Pt. 1, p. 485 124
21 *New International Encyclopædia* (1930), 326 123
1 Opinions of the Attorney General, 32 69
Opinion of the Solicitor, Department of State, October 2, 1906, 99 Cong. Rec. 3621 50
Presidential Proclamation No. 2667, September 28, 1945, 10 Fed. Reg. 12303, 59 Stat. 884 ..... 7, 90, 181
Procès-verbal of Jacques de la Métairie, April 9, 1682, 2 Margry, *Découvertes et Établissements des Français dans L'Ouest et dans le Sud de L'Amérique Septentrionale* (1877), 186 113–114
Proclamation of René Robert Cavelier de La Salle, April 9, 1682, 2 Margry, *Découvertes et Établissements des Français dans L'Ouest et dans le Sud de L'Amérique Septentrionale* (1877), 191–192 ..... 112 113
Recueil d' Arrests (Amsterdam, 1720), 1, 3 116
S. 1901, 83d Congress 86
S. J. Res. 13, 83d Congress 27, 29
S. Rept. No. 133, 83d Cong., 1st Sess.:
2–5 27
9 93
S. Rept. No. 411, 83d Cong., 1st Sess.:
7 96
15 88
Senate Committee on Interior and Insular Affairs, Hearings on S. J. Res. 13, 83d Cong., 1st Sess., 1053, 1056 91
Senate Resolution of March 1, 1837, 4 Cong. Globe (24th Cong., 2d Sess.) 83, 214 140–141
Treasury Department Order of July 31, 1950, 15 Fed. Reg. 6521 133
United States Coast & Geodetic Survey Charts:
1115 134
1116 ..... 24, 134
1267 134
1270 134
1272–1279 134

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Webster's Geographical Dictionary (1949), 1070 124

Webster's New International Dictionary (2d ed.):

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In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 11, ORIGINAL

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA

BRIEF FOR THE UNITED STATES IN SUPPORT OF MOTION FOR JUDGMENT

JURISDICTION

This is a suit between the United States and a State. As such, it is within the original jurisdiction of the Court under Article III, Section 2, Clauses 1 and 2, of the Constitution of the United States and 28 U. S. C. 1251 (b) (2).

STATUTES INVOLVED

Relevant portions of the following statutes are set out in Appendix A, *infra*, pp. 162–175:

Act to enable the people of the Territory of Orleans to form a constitution and state government, etc., approved February 20, 1811, 2 Stat. 641; *infra*, p. 162;

Act for the admission of the State of Louisiana into the Union, etc., approved April 8, 1812, 2 Stat. 701; *infra*, p. 163;

Submerged Lands Act, Public Law 31, 83d Congress, approved May 22, 1953, 67 Stat. 29; *infra,* p. 164;

Outer Continental Shelf Lands Act, Public Law 212, 83d Congress, approved August 7, 1953, 67 Stat. 462; *infra,* p. 167;

Louisiana Act 55 of 1938, approved June 30, 1938, Louisiana Acts of 1938, p. 169; *infra,* p. 170;

Louisiana Act 33 of 1954, approved June 21, 1954, Louisiana Acts of 1954, p. 63; *infra,* p. 173.

QUESTIONS PRESENTED

1. Whether the United States is entitled, as against the State of Louisiana, to the lands, minerals and other things underlying the Gulf of Mexico, lying more than three geographic miles seaward from the ordinary low-water mark and from the outer limit of inland waters on the coast of Louisiana and extending seaward to the edge of the continental shelf.

2. Whether the United States is entitled to an accounting by the State of Louisiana for all sums of money derived by the State after June 5, 1950, from such lands and minerals.

STATEMENT

The allegations of the complaint may be summarized as follows: On June 5, 1950, the United States was entitled, as against the State of Louisiana, to the submerged lands and resources of the Gulf of Mexico lying seaward of the low-water mark and outer limit of inland waters on the coast of Louisiana, and it remains so entitled except to the extent that its rights

have been modified by the Submerged Lands Act of May 22, 1953, 67 Stat. 29. Complaint, paragraph II, pages 3–4. On December 11, 1950, this Court entered its decree declaring the United States to be entitled, as against the State, to those submerged lands and resources extending gulfward twenty-seven geographic miles from the low-water mark and from the outer limit of inland waters,[1] enjoining the State from interfering therewith, and requiring it to account for sums derived from that area after June 5, 1950, properly owing to the United States. *United States* v. *Louisiana*, 340 U. S. 899. Complaint, paragraph III, page 4. Thereafter, the Submerged Lands Act of May 22, 1953, granted to the State the lands and resources under navigable water within the State boundary, extending into the Gulf of Mexico not more than three geographic miles unless the State boundary, as previously approved by Congress or as it existed when the State entered the Union, extended more than three miles, and not more than nine geographic miles in any event. The Act also released all money claims based on operations in the area granted. 67 Stat. 29, 43 U. S. C. (1952 ed.) Supp. III, 1301–1315. Complaint, paragraph IV, pages 4–5. Louisiana's boundary did not extend more than three miles into the Gulf when the State entered the Union, and Congress has not approved a boundary for the State extending a greater distance. Complaint, paragraph

[1] Lands more than twenty-seven miles in the Gulf were not then in suit because such lands were not claimed by the State at that time. See *United States* v. *Louisiana*, 339 U. S. 699, 705.

V, page 5. The United States thus remains entitled to the submerged lands and resources beyond the three-mile limit, and to an accounting for the State's receipts therefrom since June 5, 1950. Complaint, paragraph VI, pages 5–6. However, the State asserts an adverse claim, and has not accounted for its receipts. By the Outer Continental Shelf Lands Act of August 7, 1953, Congress declared the existence of an urgent need for development of these resources, and provided for issuance of mineral leases by the Secretary of the Interior. The State, by conduct in assertion of its claim, is interfering with development of the area under that statute, thereby inflicting irreparable injury for which the United States has no adequate remedy but this suit. Complaint, paragraph VII, pages 6–7. The original jurisdiction of this Court is invoked because of the need for a prompt and final determination of the dispute, and because that determination will involve ascertaining and applying the foreign policy of the United States with respect to the width of the marginal sea which it claims—an international question of great delicacy and importance. Complaint, paragraph IX, page 7. The relief sought is a declaration of the Government's rights in the disputed area and an accounting for the State's receipts therefrom, between the three-mile line and the twenty-seven mile line, since June 5, 1950. Complaint, page 8.

On May 11, 1956, Louisiana filed suit in a State court against two officials of the United States Department of the Interior and twenty-five oil companies, seeking

to quiet title in the State to the submerged lands and resources extending seaward to the 27th parallel (which is from 120 to 180 geographic miles from the shore of Louisiana) and to enjoin the defendants from interfering therewith without consent of the State. On June 11, 1956, this Court enjoined prosecution of that or any other case involving the controversy before the Court here. 351 U. S. 978.[2]

On November 5, 1956, Louisiana filed its answer, asserting eight defenses. The first defense consists of denials, supplemented by some explanatory allegations. The State asserts full title to the submerged lands and resources, and denies that the United States has ever had any rights therein except power to regulate commerce, navigation and defense and as trustee for Louisiana before creation of the State. Answer, pages 2–3, Paragraph II. The State asserts that the Submerged Lands Act, 67 Stat. 29, 43 U. S. C. (1952 ed.) Supp. III, 1301–1315, and the Outer Continental Shelf Lands Act, 67 Stat. 462, 43 U. S. C. (1952 ed.) Supp. III, 1331–1343, nullified the theory of this Court's decree of December 11, 1950, disclaimed any federal right or title in the submerged lands and resources, and asserted a territorial boundary including

[2] The injunction included a prohibition of new leasing or drilling in the disputed area by either the United States or Louisiana, except by agreement filed with the Court. On October 12, 1956, the United States and the State executed and filed with the Court such an agreement, permitting continued development of the area and providing for the recognition of new leases and the disposition of revenues received pending determination of this litigation.

the continental shelf;[1] that, consequently, the State must be held always to have had title to the submerged lands and resources; and that neither Act requires the State to make any payment to the United States. Answer, pages 3–4, Paragraph III. The State denies that the effect of the Submerged Lands Act is as alleged by the United States, and asserts that the Act recognized that the United States had no rights in the submerged lands and resources underlying the Gulf of Mexico. It alleges that if the Submerged Lands Act or Outer Continental Shelf Lands Act restrict the State's right to extend its boundaries or title to the submerged lands and resources as far as the edge of the continental shelf, or if those Acts assert rights in such lands and resources for the United States, they are to that extent unconstitutional for various stated reasons. Answer, pages 4–7, Paragraph IV. The State denies the allegations that its boundary when it entered the Union extended no more than three miles into the Gulf and that Congress has never approved a greater extent for it. It alleges that its southern boundary has always been coextensive with that acquired by the United States under the Treaty of Paris, April 30, 1803. Answer, page 7, Paragraph V. The State denies that the United States is entitled to any of the submerged lands and resources or any

[1] The continental shelf is "a submarine plane of variable width, forming a border to nearly every continent. The water above it is comparatively shallow (usually less than 100 fathoms). The rapid descent from it to the ocean depths is known as the continental slope." Webster's New International Dictionary (2 ed., 1956) 576.

accounting. Answer, pages 7–8, Paragraph VI. The State alleges that the actions of the Secretary of Interior in leasing tracts in the area have been unlawful and unauthorized and were done over the protest of the State and that the State is entitled to an accounting from such operations. Answer, page 8, Paragraph VII. The State alleges that it cannot be deprived of the right to have a boundary coextensive with that of the United States; that Presidential Proclamation No. 2667 of September 28, 1945, 10 Fed. Reg. 12303, 59 Stat. 884, the Submerged Lands Act and the Outer Continental Shelf Lands Act asserted federal jurisdiction over the entire continental shelf and are unconstitutional to the extent that they assert federal ownership of the submerged lands and resources thereof or prevent the State from extending its boundaries correspondingly. Louisiana Act 55 of 1938 declared the State boundary to be 27 miles from shore; Louisiana Act 33 of 1954 declared the State boundary to be three leagues from the line established under 33 U. S. C. 151.[4] The State alleges that the boundaries so declared conform to international law and the policies of the United States. Answer, pages 9–11, Paragraph VIII. The State denies the grounds advanced by the United States for invoking the original jurisdiction of this Court, and alleges that the State has exercised unquestioned jurisdiction and acts of ownership over the disputed area under claim of

[4] This line, established by the Commandant of the Coast Guard, delimits the waters where the Inland Rules of Navigation are to be observed.

right from its admission into the Union until 1949. Answer, pages 12–13, Paragraph IX.

Alternatively, Louisiana pleads seven affirmative defenses. The second defense is that by proclamation of April 9, 1682, La Salle claimed for France the territory of Louisiana extending southward to the 27th parallel, that the 27th parallel was always claimed and recognized as the southern boundary of Louisiana by European powers, and that the 27th parallel was the southern boundary of Louisiana when the United States acquired it from France and when it was admitted into the Union as a State and is its southern boundary today. Answer, pages 14–17.

Louisiana's third defense is that under the Act of April 8, 1812, admitting the State into the Union, 2 Stat. 701, this Court's decision in *Louisiana* v. *Mississippi*, 202 U. S. 1, and Louisiana Act 33 of 1954 redefining the State boundary, the southern boundary of the State is three leagues seaward from the coast line and from the line established by the Commandant of the Coast Guard under 33 U. S. C. 151. Answer, pages 17–21.

Louisiana's fourth defense is that the possession by every coastal state of a marginal belt at least three leagues in width was recognized by the United States and all other nations of the Western Hemisphere when Louisiana entered the Union, has always been recognized by the United States, and since Louisiana's admission to the Union has been recognized by the great maritime nations of the world. In any event, Louisiana alleges, Texas and Florida are recognized as having 3-league marginal belts, and Louisiana is

entitled to be on an equal footing with them in that respect. Answer, pages 21–24.

Louisiana's fifth defense is that the State ever since its creation has exercised exclusive and unchallenged possession of the submerged lands and minerals of the Gulf of Mexico, from which have resulted a prescriptive title and a general belief and conclusive presumption that the State has fee simple title to such lands and minerals. Answer, pages 24–26.

Louisiana's sixth defense is that the United States from time immemorial has recognized Louisiana's title to the submerged lands of the Gulf of Mexico, and that such conduct shows the meaning of the Act admitting Louisiana to the Union and estops the United States from making a contrary claim. Answer, pages 26–27.

Louisiana's seventh defense is that the United States and the State from time immemorial have interpreted the Act of Admission as including the lands and resources of the Gulf of Mexico as being within the State's boundaries; that the State in reliance thereon has administered those resources and has incurred debts for the purpose of paying its debts and building highways, bridges and hospitals; and that by acquiescence therein the United States is now estopped to deny the State's title to such land and resources. Answer, pages 27–28.

Louisiana's eighth defense is that a determination of the location of the base line from which the width of the marginal belt is measured should be made at the same time that the width of the marginal belt is determined, and that such determination will require the introduction of documentary evidence and the

taking of testimony. The State asks to have the case transferred to a district court, on the ground that the issues can be more conveniently determined there. Answer, pages 28–30.

SUMMARY OF ARGUMENT

Point I of the Argument sets forth the Government's affirmative case, showing that, on the basis of facts which are subject to judicial notice, the United States is entitled to judgment as a matter of law. Point II discusses separately the allegations of the eight defenses asserted by Louisiana's answer, showing why we consider all of them to be immaterial or unsound.

I

It appears from the complaint that all the facts material to the Government's claim are subject to judicial notice, and that the United States is entitled to judgment as a matter of law. In *United States* v. *Louisiana,* 339 U. S. 699, 340 U. S. 899, this Court held that rights in the offshore submerged lands and resources belonged to the United States rather than the State, and directed the State to account for sums received therefrom after June 5, 1950, which were properly owing to the United States. That decision is *res judicata* and determines the rights of the United States except to the extent that those rights have been subsequently relinquished. The only such relinquishment has been that made by the Submerged Lands Act, 67 Stat. 29, 43 U. S. C. (1952 ed.) Supp. III, 1301–1315. That Act relinquished to Louisiana the rights of the United States to submerged lands, resources,

and the proceeds thereof within the boundary of the State, limiting the grant, however, to the boundary as previously approved by Congress or as it existed when the State entered the Union or as extended to a distance of three marine miles, and not exceeding three leagues in any event, from the low-water mark and outer limit of inland waters on the coast of the State.

Under the Submerged Lands Act, the location of the State boundary is left to be judicially ascertained. We consider it fundamental that the State boundary cannot be farther seaward than the national boundary. The location of the national boundary is a political matter, to be determined by the political branches of the government; their determination regarding it is binding upon the courts and is subject to judicial notice. A formal declaration by the Department of State is the most appropriate source of information on this subject, and should be accepted as conclusive. Here, the Secretary of State has specifically declared that the national maritime boundary is and has always been at a distance of three miles, and no more, from the low-water mark and from the outer limit of inland waters along the coasts. That declaration is in accordance with a long line of diplomatic history, including both treaties and international correspondence, extending through the whole time of the Nation's existence, and all of which is subject to judicial notice.

Presidential Proclamation No. 2667 of September 28, 1945, 59 Stat. 884, and Section 3 of the Outer Continental Shelf Lands Act, 67 Stat. 462, 43 U. S. C.

(1952 ed.) Supp. III, 1332, *infra*, pp. 181–182, declared the submerged lands and resources of the continental shelf to be subject to the jurisdiction of the United States, but did not bring them within the territorial boundary of the United States or of the coastal States. Thus the United States remains entitled, under this Court's decree, to the submerged lands and resources lying seaward of the three-mile limit, and moneys derived therefrom by the State since June 5, 1950.

II

A. REPLY TO FIRST DEFENSE

(1) All the material facts are subject to judicial notice, and Louisiana's answer does not raise a genuine issue as to any material fact. The eight defenses pleaded alternatively by Louisiana are all insufficient in law to defeat the claim of the United States. We consider them separately.*

(2) The Submerged Lands Act did not nullify the theory of this Court's decree of December [illegible], 1950, 340 U. S. 899, or repudiate the rights there adjudged to belong to the United States. It merely transferred to Louisiana and other coastal States a limited part of those rights. Thus, the decree remains in effect according to its terms as to all rights not so transferred.

(3) The rights asserted by the United States in the submerged lands and resources of the continental shelf seaward of the three-mile limit are extraterri-

* The numbers preceding these paragraphs in the summary correspond with the numbered subdivisions in the body of this brief, *infra*, pp. 81–150.

torial in their nature. The assertion of those rights by the Submerged Lands Act did not constitute an enlargement of the national boundary beyond the three mile limit. Even if it had done so, that would have been irrelevant here, since it did not enlarge State boundaries in any event. Moreover, the grant made to the States by the Submerged Lands Act does not extend beyond the three-mile limit unless State boundaries extending further existed when the State entered the Union or were approved by Congress before May 22, 1953. The Outer Continental Shelf Lands Act took effect August 7, 1953.

(4) The right of the United States to an accounting rests on this Court's decree of December 11, 1950, 340 U. S. 899. It is therefore immaterial that, as Louisiana alleges, neither the Submerged Lands Act nor the Outer Continental Shelf Lands Act in terms requires such an accounting. The United States retains all rights under the decree which were not relinquished by the Submerged Lands Act.

(5) The Submerged Lands Act was not a recognition by Congress that the United States had no rights in the submerged lands despite the decree of this Court; it was a transfer to the States of part of the rights decreed to be in the United States.

(6) The Submerged Lands Act and Outer Continental Shelf Lands Act do not unconstitutionally infringe any right of Louisiana, under the treaty for the Louisiana Purchase, to extend its boundaries to the edge of the continental shelf. A statute supersedes a prior inconsistent treaty, and is not rendered unconstitutional thereby. Also, the treaty provision on

which Louisiana relies has been fully executed and is no longer of any effect, as this Court has held. Moreover, the territory ceded to the United States by France was bounded by the shore, so that the treaty had no application to any offshore area. And in any event, the treaty required only that the inhabitants of Louisiana be given the privileges of national citizenship according to constitutional principles; no constitutional principle permits States to extend their boundaries beyond the boundary of the United States. This Court has already held that, under the Constitution, the submerged lands and resources of the adjacent sea belonged to the United States, not to the States; in granting part of them to the States, the Submerged Lands Act enlarged, rather than restricted, the rights of the States. Neither it nor the Outer Continental Shelf Lands Act purports to affect State boundaries in any way. The Submerged Lands Act does limit the State boundaries which it uses to measure submerged lands granted to the State, but Congress has complete discretion to limit federal grants as it will.

(7) There is no legal reason why the boundary of Louisiana must be coextensive with that which the United States acquired from France; in fact it is more extended, for the area acquired from France stopped at the shore.

(8) Louisiana alleges that federal leasing in the disputed area has been without authority of law, and in violation of acts of Congress. However, the Outer Continental Shelf Lands Act clearly authorizes fed-

eral leasing in the submerged lands seaward of those granted to the States. We have shown why we believe that the area granted to Louisiana did not extend more than three miles from the coast; it follows that federal leasing in the disputed area, which lies seaward of the three-mile limit, has been authorized by Congress.

(9) Louisiana's statutes of 1938 and 1954 purporting to extend its boundaries more than three miles into the Gulf of Mexico do not entitle it to any rights in the submerged lands or resources beyond the three-mile limit. Neither act was in effect when the State entered the Union in 1812, or was approved by Congress before May 22, 1953 (or ever). Beyond the three-mile limit, the Submerged Lands Act is limited to State boundaries which meet one of those qualifications. Except as granted by the Submerged Lands Act, the submerged lands and resources of the Gulf of Mexico belong to the United States under this Court's decree of December 11, 1950, 340 U. S. 899.

(10) Louisiana alleges that the decision of this case will not involve inquiry into, or application of, the foreign policy of the United States with respect to the location of the national boundary. However, a limiting factor in the decision of this case is the location of the seaward boundary of the United States. That boundary has been established by the political branches of the Government, as a matter of foreign policy, at the three-mile limit, and should be so recognized by this Court. The boundary of the State, as used by the Submerged Lands Act to define the extent

of the grant of submerged lands to the State, cannot exceed the national boundary.

(11) Louisiana has acquired no rights against the United States by acts of jurisdiction or ownership in the disputed area. The issue of ownership was decided against Louisiana by the decree of December 11, 1950, 340 U. S. 899, and nothing has happened since to modify that decision except the Submerged Lands Act. That Act grants no rights beyond the three-mile limit except where more extended boundaries existed when the State entered the Union, or were approved by Congress before May 22, 1953. Even if the State had extended its boundaries by exercise of sovereignty, that would have been after its admission to the Union, and has not been approved by Congress; moreover, a State cannot by any means extend its boundaries beyond those of the United States.

B. REPLY TO SECOND DEFENSE

(1) Neither France nor Spain claimed a boundary for Louisiana extending beyond the shore. La Salle claimed for France to the mouth of the Mississippi; his expression of a mistaken opinion that it was at about the 27th parallel did not show an intention to claim to that line, which is actually about 120 nautical miles into the Gulf. Subsequent acts and expressions by France and Spain show that their claim to Louisiana ended at the shore.

(2) The Escurial Treaty of October 28, 1790, between Britain and Spain, was not a recognition by Britain of a ten-league boundary for Louisiana. It applied only in the Pacific Ocean and the South Seas,

neither of which includes the Gulf of Mexico; moreover, it was not a recognition of territorial boundaries, but only an undertaking to keep British vessels from approaching within ten leagues of Spanish settlements, to prevent smuggling.

(3) Regardless of what France or Spain claimed, for purposes of American jurisprudence, their actual boundary was where our State Department recognized it as being; and the United States has never recognized any territorial boundary more than three miles in the sea.

(4) The act admitting Louisiana to the Union described the State as being bounded by the Gulf, including all islands within three leagues of the coast. 2 Stat. 701. This did not include by implication the waters and bed of the Gulf to the 27th parallel, as having been part of the Louisiana Purchase; the Louisiana Purchase stopped at the shore. If the State received any maritime belt by implication it was the three-mile belt recognized by the United States as the maximum permitted by international law, but in any event the submerged lands and resources of the Gulf were not attributes of State sovereignty and did not pass to the State.

C. REPLY TO THIRD DEFENSE

(1) *Louisiana* v. *Mississippi*, 202 U. S. 1, only located the boundary between Louisiana and Mississippi in the inland waters of Lake Borgne and Mississippi Sound; it did not decide the width of the maritime belt of either State in the Gulf.

(2) Questions as to the proper location of the boundary of inland waters, from which Louisiana's marginal belt should be measured, are premature at this time. However, the line drawn by the Commandant of the Coast Guard to delimit waters where the inland rules of navigation must be followed is clearly not the proper base line. The Commandant expressly stated, in drawing the line, that it had no relationship to State boundaries. The line runs far seaward of the outermost points and islands, so clearly does not enclose inland waters in the ordinary jurisdictional sense. The Commandant's authority related only to navigation, and lines drawn under it do not change State boundaries. Louisiana Act 33 of 1954, claiming a boundary three leagues beyond the Coast Guard line, is untenable as a construction of the provision in the act admitting the State to the Union, that it included all islands within three leagues of the coast; as an affirmative boundary extension it is unavailing to give the State rights in submerged lands beyond the three-mile limit because, if for no other reason, it was not approved by Congress before May 22, 1953, as required by the Submerged Lands Act.

(3) Neither *Louisiana* v. *Mississippi,* 202 U. S. 1, nor *The Josephine,* 3 Wall. 83, recognized any part of what is now the Coast Guard line as constituting part of the coast of Louisiana.

D. REPLY TO FOURTH DEFENSE

(1) When Louisiana entered the Union in 1812, the United States did not claim or recognize bound-

aries extending more than three miles into the sea. Other nations did not then generally recognize three league boundaries, nor would it be material here if they had done so. Domestic policy determines domestic law on the subject.

(2) The United States has never recognized that States or nations bordering on the Gulf of Mexico have boundaries extending three leagues therein. Our diplomatic recognition of the Republic of Texas was not a recognition of the territorial boundaries which it claimed, including a boundary three leagues in the Gulf. Our annexation of Texas reserved all questions of boundary. The Treaty of Guadalupe Hidalgo, 9 Stat. 922, and the Gadsden Treaty, 10 Stat. 1031, extending the boundary between the United States and Mexico three leagues into the Gulf, were only to prevent smuggling at that point, and did not recognize any right to a three-league maritime belt. That is the construction which the United States has repeatedly put on those treaties from the moment of their adoption, and it should be adhered to by the Court. The Act of June 25, 1868, 15 Stat. 73, admitting Florida and other States to representation in Congress after the Civil War, was not an approval of the provision of Florida's constitution claiming a boundary three leagues in the Gulf. It only determined that Florida had established a republican form of government.

(3) Other nations have not since 1812 recognized American boundaries as three leagues in the Gulf, nor would it matter here if they had done so. Under

the Submerged Lands Act, approval by Congress is the only thing that can give Louisiana property rights in the seabed on the basis of boundary extensions beyond the three-mile limit made after entry of the State into the Union.

(4) Louisiana's claim to three leagues in order to achieve equal footing with Florida and Texas is without legal foundation. Whatever rights those two States have, both entered the Union after Louisiana. Therefore, even if equal footing with those States were required by some extension of the traditional theory, it could have no application to Louisiana's boundaries as referred to in the Submerged Lands Act. It did not fix a boundary at the time Louisiana joined the Union and has not since been approved by Congress.

E. REPLY TO FIFTH DEFENSE

Louisiana's claimed exercise of jurisdiction and ownership over the submerged lands and minerals of the Gulf give it no proprietary rights therein. Under this Court's decree of December 11, 1950, 340 U. S. 899, Louisiana has no rights in the submerged lands and minerals except as since granted by the Submerged Lands Act. Assertions of jurisdiction by the State since its admission, even if effective to give it an extended boundary for jurisdictional purposes, have not been approved by Congress and so give it no proprietary rights under the Submerged Lands Act.

F. REPLY TO SIXTH DEFENSE

Louisiana has gained no proprietary rights beyond the three-mile limit through federal acquiescence in her claims. Such supposed acts of acquiescence cannot establish a boundary beyond that which, throughout the period in question, was repeatedly and officially declared by the United States to be at three miles.

G. REPLY TO SEVENTH DEFENSE

The State's actions in paying its debts and providing for itself public facilities such as roads, hospitals and education, cannot estop the United States from asserting its rights beyond the three-mile limit.

H. REPLY TO EIGHTH DEFENSE

It is appropriate at this time to enter a decree describing in general terms the limit of the State's ownership, leaving to supplementary proceedings the precise identification of the limits so described. To attempt to make a complete determination of all questions simultaneously would introduce complicated factual questions and would unnecessarily delay settlement of the basic legal issue.

ARGUMENT

In Point I, *infra*, pp. 22–81, we set forth the Federal Government's affirmative case in support of its claim to the submerged lands and resources more than three miles from the coast of Louisiana. In Point II, *infra*, pp. 81–161, we answer the mass of separate allegations—most of them immaterial and all of the rele-

vant ones lacking merit—contained in the eight independent defenses in the State's Answer. Wherever possible, we have attempted not to repeat in Point II the details of arguments put forth elsewhere in this brief; but the Court will understand that the overlapping and interrelated nature of many of Louisiana's contentions makes some repetition unavoidable.

I

THE COMPLAINT SHOWS FACTS SUBJECT TO JUDICIAL NOTICE WHICH ENTITLE THE UNITED STATES TO JUDGMENT AS A MATTER OF LAW

A. THE RIGHTS OF THE UNITED STATES HAVE ALREADY BEEN ADJUDICATED, EXCEPT TO THE EXTENT THAT THEY HAVE BEEN SUBSEQUENTLY RELINQUISHED BY THE SUBMERGED LANDS ACT

In the case of *United States* v. *Louisiana*, 339 U. S. 699, this Court on June 5, 1950, held that, as between the United States and the State, the United States was entitled to the submerged lands and minerals of the Gulf of Mexico, extending seaward 27 marine miles from the low-water mark and from the outer limit of inland waters on the coast of Louisiana. The decree entered by the Court in that case on December 11, 1950, included the following (340 U. S. 899–900):

> 1. The United States is now, and has been at all times pertinent hereto, possessed of paramount rights in, and full dominion and power over, the lands, minerals and other things underlying the Gulf of Mexico, lying seaward of the ordinary low-water mark on the coast of Louisiana, and outside of the inland waters, extending seaward twenty-seven marine miles and bounded on the east and west, respectively,

by the eastern and western boundaries of the State of Louisiana. The State of Louisiana has no title thereto or property interest therein.

* * * * *

3. The United States is entitled to a true, full, and accurate accounting from the State of Louisiana of all or any part of the sums of money derived by the State from the area described in paragraph 1 hereof subsequent to June 5, 1950, which are properly owing to the United States under the opinion entered in this case on June 5, 1950, this decree, and the applicable principles of law.

That decree is *res judicata* as to the rights of the United States at that time, with respect to lands and resources within 27 miles of the coast. The decision must also be considered controlling, if not strictly *res judicata,* as to lands and resources lying farther seaward. Only a distance of 27 miles was involved in that suit because that was then the extent of Louisiana's claim, under Louisiana Act 55 of 1938 (La. Acts 1938, p. 169; 49 La. Rev. Stats. (1950) 1–3; Appendix A, *infra,* p. 170), 339 U. S. at 705. However, in explaining its decision, the Court said (*ibid.*):

> If, as we held in California's case [*United States* v. *California,* 332 U. S. 19], the three-mile belt is in the domain of the Nation rather than that of the separate States, it follows *a fortiori* that the ocean beyond that limit also is. The ocean seaward of the marginal belt is perhaps even more directly related to the national defense, the conduct of foreign affairs,

and world commerce than is the marginal sea. Certainly it is not less so.

Similarly, in *United States* v. *Texas*, 339 U. S. 707, establishing the rights of the United States in submerged lands and resources as against the State of Texas, the Court said of Texan statutes that had purported to extend the State boundary, first to the 27-mile line and then to the outer edge of the continental shelf (339 U. S. at 720): "The irrelevancy of these acts to the issue before us has been adequately demonstrated in *United States* v. *Louisiana.*" Clearly those decisions apply equally to the lands and resources within the limits of Louisiana's most extreme present claim of a boundary at the twenty-seventh parallel.[5]

The rights thus established in the United States by the 1950 decree cannot have been lost except pursuant to an act of Congress, which alone has power to dispose of property rights of the United States. *Royal Indemnity Co.* v. *United States*, 313 U. S. 289, 294. The only act of Congress providing for transfer of those rights from the United States to the States is the Submerged Lands Act, 67 Stat. 29, 43 U. S. C. (1952 ed.) Supp. III, 1301–1315. The present question, then, is simply one of determining the extent of the rights transferred to the State by the Submerged Lands Act.

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[5] Opposite the coast of Louisiana, the twenty-seventh parallel is at some points more than 60 marine miles south of the 100-fathom depth generally taken as marking the outer edge of the continental shelf. See U. S. Coast & Geodetic Survey Chart No. 1116.

B. THE SUBMERGED LANDS ACT GRANTED TO LOUISIANA THE SUBMERGED LANDS AND RESOURCES WITHIN ITS BOUNDARY ONLY, BUT DID NOT DETERMINE THE LOCATION OF THAT BOUNDARY

1. The Submerged Lands Act extends only to submerged lands within the State boundary

It is clear from the terms of the Submerged Lands Act that it relates only to submerged lands and resources within State boundaries as there qualified and defined. The granting section of that Act is Section 3, which provides (67 Stat. 30, 43 U. S. C. (1952 ed.) Supp. III, 1311; Appendix A, *infra*, pp. 165–166):

> (a) It is hereby determined and declared to be in the public interest that (1) title to and ownership of the lands beneath navigable waters *within the boundaries of the respective States*, and the natural resources within such lands and waters, * * * be, and they are hereby, subject to the provisions hereof, recognized, confirmed, established, and vested in and assigned to the respective States * * * ;
>
> (b) (1) The United States hereby releases and relinquishes unto said States and persons aforesaid, except as otherwise reserved herein, all right, title, and interest of the United States, if any it has, in and to all *said* lands, improvements, and natural resources * * * . [Emphasis added.]

Section 2 of the Act, defining its terms, includes the following (67 Stat. 29, 43 U. S. C. (1952 ed.) Supp. III, 1301; Appendix A, infra p. 165):

> (b) The term "boundaries" includes the seaward boundaries of a State or its boundaries in

> the Gulf of Mexico or any of the Great Lakes as they existed at the time such State became a member of the Union, or as heretofore approved by the Congress, or as extended or confirmed pursuant to section 4 hereof but in no event shall the term "boundaries" or the term "lands beneath navigable waters" be interpreted as extending from the coast line more than three geographical miles into the Atlantic Ocean or the Pacific Ocean, or more than three marine leagues into the Gulf of Mexico.

Section 4 of the Act confirms the seaward boundaries of the original States as three miles from the coast, and approves past or future extensions to the same distance by other States, without prejudice to any State's boundary at a greater distance than three miles if previously so approved by Congress or provided for by the constitution or laws of the State before or when it entered the Union. 67 Stat. 31, 43 U. S. C. (1952 ed.) Supp. III, 1312; Appendix A, *infra* p. 167.

There can be no doubt of the power of Congress to limit the scope of its grant in this way. The Submerged Lands Act was an exercise of the power of Congress to dispose of property of the United States, *Rhode Island* v. *Louisiana*, 347 U. S. 272, and "it lies in the discretion of Congress, acting in the public interest, to determine of how much of the property it shall dispose." *Ashwander* v. *Tennessee Valley Authority*, 297 U. S. 288, 336.

2. The Submerged Lands Act neither changes nor declares the location of the Louisiana boundary

From the sections of the Submerged Lands Act just referred to, it is apparent that the Act does not change the location of the State boundary. The submerged lands granted to the State, as defined by Section 2 (b), are those lying within the boundary as it existed when the State entered the Union, or as since approved by Congress, not extending, however, more than three leagues into the Gulf of Mexico. Neither does the Act express any opinion as to the location of the boundary. Boundaries claimed to lie more than three miles from the coast are not among those "approved and confirmed" by Section 4, but on the other hand that section provides that it is not to be construed as "questioning or in any manner prejudicing" such boundaries. The Court, then, must look beyond the face of the Act to discover the scope of the grant made by it.

This evident meaning of the Submerged Lands Act is fully supported by its legislative history. Throughout the debates in the Senate, where the Act in its present form originated,[6] it was repeatedly pointed out that the bill did not in any way approve or disapprove the claim of any Gulf State to three leagues, but rather left that question wholly at large and sub-

[6] As passed, the Act is designated as H. R. 4198, 83d Congress. However, the language of the original House bill was replaced by a Senate amendment, which substituted, with only minor changes, the provisions of S. J. Res. 13 as reported by the Committee on Interior and Insular Affairs. See S. Rept. No. 133, 83d Cong., 1st Sess., pp. 2-5; 99 Cong. Rec. 4487-4488.

ject to future determination to the same extent as if the Act had not been passed.

This point, that the Act neither endorsed nor prejudiced the claims of the Gulf States, but left those States free to make what proof they could as to their boundary locations, was particularly emphasized by Senator Cordon, acting chairman of the Senate Committee on Interior and Insular Affairs, who explained the bill to the Senate when it was reported out by that committee; and many others made statements to the same effect. The following excerpts from the debates are typical:

> Mr. CORDON. * * * The States of the United States have legal boundaries. It is not a part of the power or the duty of Congress to make determination with reference to those boundaries, or where those boundaries should lie. It is a matter for the courts to determine, or for the United States, through Congress and the legislative organizations of the several States, to reach an agreement upon. The pending bill does not seek to invade either province. It leaves both exactly where it finds them. Whenever a question arises as to a boundary, it will be determined exactly as any question in law is determined, and the boundary will be established.
>
> The pending measure does not seek to prejudge that issue, or to determine it. [99 Cong. Rec. 2620.][1]

[1] See also 99 Cong. Rec. pp. 2621, 2632, 2633, 2694, 2696, 2699, 2755, 2756–57, 2896, 2916, 2923, 2933, 2975, 3035, 3037.

Senator Holland of Florida, who was the author of S. J. Res. 13,* also stated categorically that it was not the purpose of the Act to determine the location of any State boundary:

> Mr. HOLLAND. * * * If it were proposed by the pending measure to extend the line beyond the 3 geographical miles, the Senator from Illinois [Mr. Douglas] would be justified in having concern. The real fact is that the joint resolution does not make any such proposal. It merely provides with complete clarity that no State which claims to have had a constitutional boundary going beyond 3 geographic miles at the time it was admitted to the Union, or claims to have a boundary that goes beyond that distance, and has been approved by the Congress since the time of its admission to the Union, will have those claimed rights affected in any way by this joint resolution. * * *
>
> * * * * *
>
> * * * all that is done under this measure, by means of the only provisions of it that apply to this question, is to preserve in status quo the exact rights, whatever they may be, of the State of Florida and, likewise, of the State of Texas or any other State to be heard upon this question.
>
> The action taken by Congress in approving the so-called Holland joint resolution and this particular provision of it does not in itself operate to extend any boundaries for Florida, Texas, or any other State beyond the 3-geographic-mile limit. It simply preserves in status

* See footnote 6, *supra*, p. 27.

quo the rights of any States which may claim to bring themselves under this provision of the joint resolution. [99 Cong. Rec. 2621–2622.]

Senator Long of Louisiana concurred in this construction in language which prophesied the issue now pending before the Court:

> Mr. LONG. * * * I submit to the Senator that the State of Louisiana has a right under the joint resolution only to establish what its boundary is and what its boundary has always been from the time it entered the Union, and that Florida and Texas have that right. The pending measure does not give to Texas, Florida, or Louisiana anything more than a boundary 3 miles out. It merely gives them the right to prove, if prove they can, that the boundary goes beyond 3 miles. [99 Cong. Rec. 2896.]

Significantly, Senators from both California and Texas, States benefiting from the Submerged Lands Act, were of the same opinion:

> Mr. KUCHEL. * * * One other question which has arisen in these debates is the California boundary statute adopted by my State in 1949. * * *
>
> * * * * * *
>
> The point here, however, is that the pending joint resolution has no effect on the 1949 act. It neither validates nor invalidates it. The effect of this act of the State of California awaits judicial determination. California, like every other State, will have an equal opportunity to establish the location of its own coastline and historic boundary. This is the basic,

underlying equity of the resolution. [99 Cong. Rec. 2985.]

* * * * *

Mr. DANIEL. The joint resolution does not undertake to fix the historic boundaries of any State, but it limits them all to the boundaries as they existed at the time each State entered the Union. [99 Cong. Rec. 2976.]

* * * * *

I may say to the distinguished Senator from New Mexico that I do not know of any fairer way to treat all the States than to confirm their titles to the lands that were beneath the navigable waters within their boundaries at the time they entered the Union. Those are the words used, or "as heretofore approved by the Congress of the United States." When we do that, we are not fixing new boundaries, and we are not changing any boundaries. The boundaries would stand as they have always stood.

They must have existed at the time Texas entered the Union at 3 leagues in the gulf, or this measure will not restore the proprietary rights to that distance; and Florida's boundaries must have been heretofore approved by Congress not hereby approved, but heretofore approved, or Florida would not receive lands under this bill to that distance. [99 Cong. Rec. 4174-4175.]

In the light of the foregoing there is no room for doubt that by the Submerged Lands Act Congress did not purport to grant to Louisiana the submerged lands to any particular distance from the shore, but rather granted such lands within the

actual boundary of the State, wherever it might be located, as it existed for purposes of ordinary political jurisdiction when the State entered the Union or as thereafter approved by Congress (but not over three leagues in any event). As the Senate debate unequivocally recognized, a mere *claim* to three leagues would not be enough; the decisive factor is the actual legal boundary and not the State's claim or demand. Accordingly, to determine the extent of the grant made to the State, it is necessary to ascertain whether its actual political boundary was more than three miles from the coast when it entered the Union.* Louisiana does not allege that Congress has approved attempts by the State, after its admission, to extend its boundary to more than three miles from the coast. It can therefore claim no benefit, under the Submerged Lands Act, from such attempts. Its attempted reliance on those purported extensions, independently of the Submerged Lands Act, are discussed *infra*, pp. 105–111, 130–136.

C. LOUISIANA HAS NEVER HAD A BOUNDARY EXTENDING MORE THAN THREE GEOGRAPHIC MILES INTO THE GULF OF MEXICO

1. The Act admitting Louisiana to the Union did not describe any marginal belt for the State, and certainly did not establish one more than three miles wide

The Louisiana Enabling Act provided for the formation of a State to comprise "that part of the

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* If the State's boundary was less than three miles from the coast, subsequent enlargements to the extent of three miles were approved by the Submerged Lands Act and are not questioned here.

territory or country ceded under the name of Louisiana" from France to the United States "contained within the following limits, that is to say: beginning at the mouth of the river Sabine," thence up that river, north, east, southward, and "along the middle of the said [Iberville] river and lakes Maurepas and Ponchartrain, to the gulf of Mexico; thence bounded by the said gulf to the place of beginning; including all islands within three leagues of the coast * * *." Act of February 20, 1811, 2 Stat. 641; Appendix A, *infra*, p. 162. With minor variations in punctuation, the Act of Admission contained the same description. Act of April 8, 1812, 2 Stat. 701; Appendix A, *infra*, p. 163.

In the past, Louisiana has sometimes contended that the foregoing description gave the State a marginal belt of three leagues. Thus, Act 55 of 1938, approved June 30, 1938, by which the State purported to extend its maritime boundary to a line twenty-seven miles from shore, contains among its preliminary recitals the following (La. Acts 1938, p. 169; Appendix A, *infra*, p. 171):[10]

> Whereas, by the Act of Congress of February 20th, 1811, by which the State of Louisiana was admitted to the United States as a State, the southern boundary of Louisiana was fixed as follows: "thence bounded by the said gulf to the place of beginning, including all islands within three leagues of the coast;"

[10] The affirmative provisions of that Act, purporting to extend the boundary of the State into the Gulf 27 miles from shore, are considered, *infra*, pp. 105–111, 130–136.

> Whereas, therefore, the gulfward boundary of Louisiana is already located in the Gulf of Mexico three leagues distant from the shore * * *.

The substance of Section 1 of that Act, codified as Section 1 of Title 49, Louisiana Revised Statutes of 1950, has now been amended by Act 33 of 1954, approved June 21, 1954, which recites that "the United States Congress admitted Louisiana as a State into the Union in April, 1812, and fixed its gulfward boundary at 3 leagues from coast." Appendix A, *infra*, p. 173. The same contention was made by the State before this Court in *Louisiana* v. *Mississippi*, 202 U. S. 1, 22, where counsel, referring to the Enabling Act, said, "The act grants all islands within three leagues of the coast and Louisiana therefore owns the islands and waters lying north of the St. Bernard peninsula and within nine miles from its coast." The Court found it unnecessary to deal with that contention under the circumstances of that case. 202 U. S. at 52. (See *infra*, pp. 128–130.) The Answer suggests, although not very explicitly, that the contention is among those which Louisiana intends to assert now. *Cf.* Second Defense, paragraph 3, Answer, 16; Third Defense, paragraph 2, Answer, 18, and paragraph 6, Answer 20; Sixth Defense, paragraph 3, Answer, 27.

It is submitted that there can be no justification for construing the boundary described in the Enabling Act as including three leagues of water and submerged land. On its face, "including all islands within

three leagues of the coast" does not appear to mean "including all waters and submerged lands within three leagues of the coast," and similar language in other boundary descriptions has not been so construed. For example, the Treaty of Paris of September 3, 1783, by which Great Britain recognized the independence of the United States, after describing the landward boundary of the United States, from the mouth of the St. Croix river in the Bay of Fundy to the mouth of the St. Mary's river between Georgia and Florida, added (8 Stat. 80, 82):

> comprehending all islands within twenty leagues of any part of the shores of the United States, and lying between lines to be drawn due east from the points where the aforesaid boundaries between Nova-Scotia on the one part, and East-Florida on the other, shall respectively touch the Bay of Fundy and the Atlantic ocean; excepting such islands as now are, or heretofore have been within the limits of the said province of Nova Scotia.

That has never been understood as meaning that the boundary of the United States was a line twenty leagues from shore in the sea; on the contrary, the United States has consistently taken the position that its boundary in the sea is three nautical miles, or one league, from the shore.[11]

[11] This point is developed in detail, *infra*, pp. 39–62.

Similarly, the Treaty of March 18/30, 1867, by which Russia ceded Alaska to the United States, described the ceded area as (15 Stat. 539):

> all the territory and dominion now possessed by his said Majesty on the continent of America and in the adjacent islands, the same being contained within the geographical limits herein set forth, to wit: * * *
>
> The western limit within which the territory and dominion conveyed, are contained, passes through a point in Behring's straits * * * and proceeds due north, without limitation, into the same Frozen ocean. The same western limit, beginning at the same initial point, proceeds thence in a course nearly southwest through Behring's straits and Behring's sea, so as to pass midway between the northwest point of the island of St. Lawrence and the southeast point of Cape Choukotski, to the meridian of one hundred and seventy-two west longitude; thence, from the intersection of that meridian, in a southwesterly direction, so as to pass midway between the island of Attou and the Copper island of the Kormandorski couplet or group in the North Pacific ocean, to the meridian of one hundred and ninety-three degrees west longitude, so as to include in the territory conveyed the whole of the Aleutian islands east of that meridian.

In the Bering Sea Fur Seal Arbitration between the United States and Great Britain, the United States conceded that the foregoing provisions only served to identify the islands conveyed, and were not a conveyance of the water area within the described line. 12 *Fur Seal Arbitration. Proceedings of the Tribunal*

of Arbitration at Paris, 1893. Oral Argument for the United States, 107–110. To the same effect was the statement made by Mr. Peirce, the American delegate at the arbitration of the whaling and sealing claim of the United States against Russia, held at the Hague in 1902. He there said (*Foreign Relations of the United States,* 1902, Appendix I, 440):

> In the first session the arbitrator asked me, "What is the extent of jurisdiction which the United States claim to-day in Bering Sea?" and I replied that the American Government now claims an extent of 3 miles. I wished that this reply might be sustained by the Secretary of State, Mr. John Hay. I am now in receipt of a dispatch, and in accordance with the authority which I have received from the Secretary of State of the United States, dated July 3, 1902, I repeat that the Government of the United States claims, neither in Bering Sea nor in its other bordering waters, an extent of jurisdiction greater than a marine league from its shores, but bases its claims to jurisdiction upon the following principle: The Government of the United States claims and admits the jurisdiction of any State over its territorial waters only to the extent of a marine league, unless a different rule is fixed by treaty between two States; even then the treaty States alone are affected by the agreement.

It is submitted there is neither reason nor authority for construing the language of the Louisiana Enabling Act as meaning other than what it says: that islands located within three leagues of the coast are part of the State of Louisiana. The normal meaning of the

boundary description, "to the gulf of Mexico; thence bounded by the said gulf to the place of beginning" (*i. e.*, "the mouth of the river Sabine") seems to be, bounded by the shore of the Gulf. If the State, as so described, was entitled to a marginal belt in the Gulf, that must have resulted not from the terms of the description but from a general national policy to regard such a belt as a normal attribute of a littoral sovereign. Certainly such a belt in any event could not exceed the width of that which the nation claimed for itself; and, as we will show (*infra*, pp. 39–62), the United States has always limited itself to a claim of a marginal belt of not more than three geographic miles. In this view, it is unnecessary to decide whether Louisiana in fact had a marginal belt when it entered the Union. Since its entry it has made statutory claim to a marginal belt of more than three miles. Louisiana Act 55 of 1938, Louisiana Acts 1938, p. 169, Appendix A, *infra*, p. 170; Louisiana Act 33 of 1954, Louisiana Acts 1954, p. 63, Appendix A, *infra*, p. 173. Section 4 of the Submerged Lands Act, approving past or future extensions of State boundaries to a distance of three miles from the coast, presumably approves to that extent these broader claims. Consequently, we concede that the State is now entitled under the Submerged Lands Act to the benefit of a three-mile marginal belt, whatever its past situation may have been. 67 Stat. 31, 43 U. S. C. (1952 ed.) Supp. III, 1312.

2. The United States has always disclaimed territorial jurisdiction over a marginal belt more than three miles wide

The concept of a marginal belt of territorial water, subject to the jurisdiction of a coastal nation, is an encroachment upon the general principle of freedom of the seas. When Louisiana became a State in 1812, the policy of the United States was already well settled to claim jurisdiction over no more than three miles of marginal sea and to recognize no greater claims by other nations. This policy had its beginning in the administration of George Washington, when Thomas Jefferson, then Secretary of State, on November 8, 1793, wrote to George Hammond, the British minister (H. Exec. Doc. 324, 42d Cong., 2d Sess., 553), and to Edmond Genet, the French minister (*American State Papers*, 1 Foreign Relations 183):

> The character of our coast, remarkable in considerable parts of it for admitting no vessels of size to pass near the shores, would entitle us, in reason, to as broad a margin of protected navigation as any nation whatever. Reserving, however, the ultimate extent of this for future deliberation, the President gives instructions to the officers acting under his authority, to consider those heretofore given them as restrained for the present to the distance of one sea-league or three geographical miles from the seashores.

Two days later, Jefferson sent to the United States Attorneys a circular to the same effect. It said, in part:

> The war at present prevailing among the European powers producing sometimes cap-

tures of vessels in the neighbourhood of our seacoast, and the law of nations admitting as a common convenience that every nation inhabiting the sea coast may extend its jurisdiction and protection some distance into the sea, the President has been frequently appealed to by the subjects of the belligerent powers for the benefit of that protection. To what distance from the seacoast this may be extended is not precisely ascertained either by the practice or consent of nations or the opinions of the Jurists who have written on the subject. The greatest distance to which any respectable assent seems to have been given is the extent of the human sight, estimated at something more than 20 miles. The least claimed by any nation is the utmost range of Cannon shot, usually stated at one sea-league, or 3 sea miles, which is a very small fraction less than 3½ Statute or american miles. Several intermediate distances have been insisted on under different circumstances, and that particularly of 3 sea-leagues has the support of some authorities which are recent. However as the Nations which practice navigation on our coasts, are interested in this question, it is thought prudent not to assume the whole distance which we may reasonably claim, until some opportunity shall occur of entering into friendly explanations and arrangements with them on the subject; but as in the mean time it is necessary to exercise the right to some distance, the President has thought it best, *so far as shall concern the exercise of the Executive powers,* to take the distance of a sea-league, which being settled by treaty between some of the belligerent powers, and as little as any of

> them claim on their own coasts, can admit of no reasonable opposition on their part. *The executive officers* are therefore instructed to consider a margin of one sea-league on our coast as that within which all hostilities are interdicted for the present, until it shall be otherwise signified to them.[12]

The policy thus tentatively announced was never modified, and soon became the settled view of this Nation on the subject. As stated in Jefferson's circular to the United States Attorneys, *supra*, the range of a cannon shot was then considered the equivalent of three miles,[13] and on November 19, 1794, the United States entered into a treaty with Great Britain recognizing the range of cannon shot as marking the territorial limits of the two countries in the sea (Art. XXV, 8 Stat. 116, 128):

> Neither of the said parties shall permit the ships or goods belonging to the subjects or citizens of the other, to be taken within cannon-shot of the coast, nor in any of the bays, ports, or rivers of their territories, by ships of war, or others having commission from any prince, republic, or state whatever. But in case it should so happen, the party whose *territorial*

[12] Ms. in National Archives, Record Group 59; emphasis in original.

[13] See also Jefferson's letter of November 8, 1793, to Mr. Hammond, the British minister: "* * * the smallest distance, I believe, claimed by any nation whatever, *is the utmost range of a cannon ball*, usually stated at one sea-league." 1 Moore, *Digest of International Law* (1906) 702; emphasis in original. See also the letter of January 23, 1849, from Secretary of State Buchanan to Mr. Jordan, *infra*, p. 44.

> *rights* shall thus have been violated, shall use his utmost endeavours to obtain from the offending party, full and ample satisfaction for the vessel or vessels so taken, whether the same be vessels of war or merchant vessels. [Emphasis added.]

On September 2, 1796, Timothy Pickering, then Secretary of State under President Washington, wrote to the Lieutenant Governor of Virginia (1 Moore, *Digest of International Law* (1906) 704):

> Our jurisdiction * * * has been fixed (at least for the purpose of regulating the conduct of the government in regard to any events arising out of the present European war) to extend three geographical miles (or nearly three and a half English miles) from our shores * * *.

Not long after Jefferson became president, the United States protested against a claim by Spain to more than three miles of territorial water around Cuba. As described by Secretary of State Bayard, writing on May 28, 1886, to Secretary of the Treasury Manning (1 Moore, *Digest of International Law* (1906) 718, 720):

> When we were involved, in the earlier part of Mr. Jefferson's Administration, in difficulties with Spain, we then told Spain that we conceded to her, so far as concerned Cuba, the same limit of territorial waters as we claimed for ourselves, granting nothing more * * *.[14]

These actions, all taken before 1812, show that the policy of the United States to claim and recognize

[14] See *infra*, pp. 48, 49.

territorial waters of three miles and no more was well established before Louisiana became a State. Moreover, twice within six years after Louisiana became a State, the Federal Government reiterated its foreign policy in this regard. Article 11 of the Treaty with Algiers, of June 30 and July 6, 1815, provided (8 Stat. 224, 225):

> If a vessel of either of the contracting parties shall be attacked by an enemy within cannon-shot of the forts of the other, she shall be protected as much as is possible.

And, the Treaty of October 20, 1818, with Great Britain reverted to the more specific terms of three miles (8 Stat. 248, 249):

> And the United States hereby renounce, forever, any liberty heretofore enjoyed or claimed by the inhabitants thereof, to take, dry, or cure fish, on or within three marine miles of any of the coasts, bays, creeks, or harbours, of his Britannic Majesty's dominions in America, not included within the above-mentioned limits * * *.

By a long succession of subsequent actions, from 1848 to the present time, this policy has been continuously maintained. When Britain protested because she feared that by the Treaty of Guadalupe Hidalgo, 9 Stat. 922, the United States and Mexico intended to claim three-league limits in the Gulf of Mexico, Secretary of State Buchanan disclaimed such intention, as follows, August 19, 1848 (1 Moore, *Digest of International Law* (1906) 730):

> I have had the honor to receive your note of the 30th April last objecting, on behalf of the

British Government, to that clause in the 5th article of the late treaty between Mexico and the United States by which it is declared that "the boundary line between the two republics shall commence in the Gulf of Mexico 3 leagues from land," instead of one league from land, which you observe "is acknowledged by international law and practice as the extent of territorial jurisdiction over the sea that washes the coasts of states."

In answer I have to state, that the stipulation in the treaty can only affect the rights of Mexico and the United States. If for their mutual convenience it has been deemed proper to enter into such an arrangement, third parties can have no just cause of complaint. The Government of the United States never intended by this stipulation to question the rights which Great Britain or any other power may possess under the law of nations.

On January 23, 1849, James Buchanan, Secretary of State under President Polk, wrote to a Mr. Jordan (*ibid.*, 705):

> The exclusive jurisdiction of a nation extends to the ports, harbors, bays, mouths of rivers, and adjacent parts of sea inclosed by headlands; and, also, to the distance of a marine league, or as far as a cannon shot will reach from the shore along its coasts.

In 1856, when Spain claimed jurisdiction over a belt of six miles around Cuba, Secretary of State William Marcy, at the direction of President Pierce, replied that the United States could not concede the extension of Spanish sovereignty beyond three miles. See letter

of Secretary of State Seward to Gabriel Tassara, December 16, 1862, 1 Moore, *Digest of International Law* (1906) 706, 708, *infra.*

William Seward, Secretary of State under President Lincoln, wrote on August 4, 1862, to Gideon Welles, Secretary of the Navy (*ibid.,* 705):

> This Government adheres to, recognizes, and insists upon the principle that the maritime jurisdiction of any nation covers a full marine league from its coast, and that acts of hostility or of authority within a marine league of any foreign country by naval officers of the United States are strictly prohibited * * *.

On December 16, 1862, Secretary of State Seward wrote to the Spanish minister (*ibid.,* 706, 707–708):

> * * * the United States are not prepared to admit that Spain, without a formal concurrence of other nations, can exercise exclusive sovereignty upon the open sea beyond a line of three miles from the coast, so as to deprive them of the rights common to all nations upon the open sea.
>
> * * * * * *
>
> Spain presented substantially the same claim to this Government in the case of the *El Dorado* in 1856, and Mr. William L. Marcy, then Secretary of State, by direction of the President, announced that the United States could not concede the extension of Spanish sovereignty beyond three miles in the seas which surround the island of Cuba.

On September 3, 1863, Secretary Seward wrote to Secretary of the Navy Welles (*ibid.*, 730):

> The stipulation in the treaty of Guadalupe-Hidalgo by which the boundary between the United States was begun in the Gulf three leagues from land is still in force. It was intended, however, to regulate within those limits the rights and duties of the parties to the instrument only. It could not affect the rights of any other power under the law of nations.

In 1874 Lord Derby, the British foreign minister, inquired as to the attitude of the United States toward the Spanish claim of two leagues. *Foreign Relations of the United States*, 1875, Pt. I, 641-642. To that inquiry Hamilton Fish, Secretary of State under President Grant, replied, January 22, 1875 (*Foreign Relations of the United States*, 1875, Pt. I, 649-650):

> In reply I have the honor to inform you that this Government has uniformly, under every administration which has had occasion to consider the subject, objected to the pretension of Spain adverted to, upon the same ground and in similar terms to those contained in the instruction of the Earl of Derby.
>
> We have always understood and asserted that, pursuant to public law, no nation can rightfully claim jurisdiction at sea beyond a marine league from its coast.
>
> This opinion on our part has sometimes been said to be inconsistent with the facts that, by the laws of the United States, revenue-cutters

are authorized to board vessels anywhere within four leagues of their coasts, and that by the treaty of Guadalupe Hidalgo, so called, between the United States and Mexico, of the second of February, 1848, the boundary line between the dominions of the parties begins in the Gulf of Mexico, three leagues from land.

It is believed, however, that in carrying into effect the authority conferred by the Act of Congress referred to, no vessel is boarded, if boarded at all, except such a one as, upon being hailed, may have answered that she was bound to a port of the United States. At all events, although the act of Congress was passed in the infancy of this Government, there is no known instance of any complaint on the part of a foreign government of the trespass by a commander of a revenue-cutter upon the rights of its flag under the law of nations.

In respect to the provision in the treaty with Mexico, it may be remarked that it was probably suggested by the passage in the act of Congress referred to, and designed for the same purpose, that of preventing smuggling. By turning to the files of your legation, you will find that Mr. Bankhead, in a note to Mr. Buchanan on the 30th of April, 1848, objected on behalf of Her Majesty's government, to the provision in question. Mr. Buchanan, however, replied in a note of the 19th of August, in that year, that the stipulation could only affect the rights of Mexico and the United States, and was never intended to trench upon the rights of Great Britain, or of any other power under the law of nations.

On May 28, 1886, Secretary of State Bayard wrote to Secretary of the Treasury Manning, reviewing the whole history of the United States' policy regarding territorial waters. He said, in part (1 Moore, *Digest of International Law* (1906) 718):

> In a letter by Mr. Jefferson, when Secretary of State on November 8, 1793, to the minister of Great Britain, and in a circular of November 10, 1793, to the United States district attorneys, the limit of one sea-league from shore was provisionally adopted by him as that of the territorial seas of the United States. The same position was taken by Mr. Pickering, Secretary of State, on September 2, 1796; by Mr. Madison, Secretary of State, Feby. 3, 1807; By Mr. Webster, Secretary of State, August 1, 1842; by Mr. Seward, Secretary of State, December 16, 1862; August 10, 1863, Sept. 16, 1864; and by Mr. Fish, Secretary of State, December 1, 1875.
>
> * * * * *
>
> We may therefore regard it as settled that, so far as concerns the eastern coast of North America, the position of this Department has uniformly been that the sovereignty of the shore does not, so far as territorial authority is concerned, extend beyond three miles from low-water mark, and that the seaward boundary of this zone of territorial waters follows the coast of the mainland, extending where there are islands so as to place round such islands the same belt. This necessarily excludes the position that the seaward boundary is to be drawn from headland to headland, and makes it follow closely, at a distance of three miles, the bound-

ary of the shore of the continent or of adjacent islands belonging to the continental sovereign.

The position I here state, you must remember, was not taken by this Department speculatively. It was advanced in periods when the question of peace or war hung on the decision. When, during the three earlier administrations, we were threatened on our coast by Great Britain and France, war being imminent with Great Britain, and for a time actually though not formally engaged in with France, we asserted this line as determining the extent of our territorial waters. When we were involved, in the earlier part of Mr. Jefferson's Administration, in difficulties with Spain, we then told Spain that we conceded to her, so far as concerned Cuba, the same limit of territorial waters as we claimed for ourselves, granting nothing more; and this limit was afterwards reasserted by Mr. Seward during the late civil war, when there was every inducement on our part not only to oblige Spain, but to extend, for our own use as a belligerent, territorial privilege. When, in 1807, after the outrage on the *Chesapeake* by the *Leopard*, Mr. Jefferson issued a proclamation excluding British men-of-war from our territorial waters, there was the same rigor in limiting these waters to three miles from shore. And during our various fishery negotiations with Great Britain we have insisted that beyond the three-mile line British territorial waters on the northeastern coast do not extend. Such was our position in 1783, in 1794, in 1815, in 1818. Such is our position now in our pending controversy with Great Britain on this important issue. * * *

During the arbitration of the United States' whaling and sealing claim against Russia, at the Hague in 1902, Mr. Peirce, the American delegate, by specific instruction of Secretary of State Hay, declared that the United States neither claimed for itself nor recognized for other nations territorial jurisdiction extending more than one league from its shores (*supra*, p. 37).

On October 6, 1906, Secretary of State Root wrote to the American Ambassador to Mexico regarding a Mexican law asserting the right to search vessels within 20 kilometers (about 10.8 nautical miles) from the coast. The Secretary enclosed an opinion by the Solicitor of the Department of State, dated October 2, 1906, which said, in part (99 Cong. Rec. 3621):

> International law limits the sovereignty of a country to 3 miles from low-water mark * * *.
>
> * * * * *
>
> While it is clearly settled that territorial jurisdiction does not extend beyond the 3-mile limit, still there is a tendency to permit the regulated exercise of the right of inspection beyond this limit. A distinction is taken between the general application of municipal laws beyond the limit and the extension of the revenue or customs laws for the purpose of facilitating importation. For example an unrepealed statute of the United States permits officers of revenue cutters "to board all vessels which arrive within 4 leagues of the coast thereof, if bound for the United States, and search and examine the same, and every part thereof, and shall demand, receive, and certify the manifest required to be on board certain

yessels, shall affix and put proper fastenings on the hatches and other communications with the hold of any vessel, and shall remain on board such vessel until they arrive at the port or place of their destination. (R. S. 2760.)

It cannot be claimed that the jurisdiction of the United States rightfully extends beyond the 3-mile limit, except to its citizens. It would seem, however, that where foreign vessels are bound to the United States, the visitation and examination of cargo as provided for in this article may be convenient. Convenience, therefore, to both parties—to the incoming vessel as well as to the customs officers—would seem to dictate the act and justify the policy. * * *

* * * * *

It would appear, therefore, in the light of authority that local jurisdiction without the consent of the party to be affected does not extend beyond the 3-mile limit * * *.

On June 16, 1909, Assistant Secretary of State Huntington Wilson wrote to Mr. F. M. Wilmot, Manager of the Carnegie Hero Fund Commission (1 Hackworth, *Digest of International Law* (1940) 634; 99 Cong. Rec. 3622):

I have to acknowledge the receipt of your letter of the 8th instant, wherein, for the information of your Commission in determining what distance from shore acts performed at sea may properly be considered as within the waters of the United States, you inquire as to the extent of the maritime jurisdiction of the United States.

In reply you are advised that this Government has always adhered to the principle that

its maritime jurisdiction extends for a distance of 1 marine league (or nearly 3½ English miles) from its coasts. This, of course, does not include any waters or bays which are so landlocked as to be, without question, only in the jurisdiction of the United States.

When an Italian royal decree of August 6, 1914, undertook to fix the limits of Italian territorial waters at six nautical miles, Robert Lansing, then Acting Secretary of State under President Wilson, wrote to the Italian Ambassador, in part as follows, November 28, 1914 (*Foreign Relations of the United States*, 1914, Supp., 665; 1 Hackworth, *Digest of International Law* (1940) 637–638):

> I am compelled to inform Your Excellency of my inability to accept the principle of the Royal Decree, in so far as it may undertake to extend the limits of the territorial waters beyond three nautical miles from the main shore line and to extend thereover the jurisdiction of the Italian Government.
>
> An examination into the question involved leads me to the conclusion that the territorial jurisdiction of a nation over the waters of the sea which wash its shore is now generally recognized by the principal nations to extend to the distance of one marine league or three nautical miles, that the Government of the United States appears to have uniformly supported this rule, and that the right of a nation to extend, by domestic ordinance, its jurisdiction beyond this limit has not been acquiesced in by the Government of the United States.

On January 23, 1924, the United States entered into a treaty with Great Britain, permitting the United States to seize British vessels engaged in liquor smuggling within one hour's sailing distance of the shore. Article I of that treaty provided (43 Stat. 1761):

> The High Contracting Parties declare that it is their firm intention to uphold the principle that 3 marine miles extending from the coast-line outwards and measured from low-water mark constitute the proper limits of territorial waters.

The same provision is contained in similar treaties entered into with Germany on May 19, 1924 (43 Stat. 1815), with Panama on June 6, 1924 (43 Stat. 1875), with The Netherlands on August 21, 1924 (44 Stat. 2013), with Cuba on March 4, 1926 (44 Stat. 2395), and with Japan on May 31, 1928 (46 Stat. 2446).

A Mexican decree of August 30, 1935, undertook to extend Mexican territorial waters from three to nine miles. On January 11, 1936, Robert W. Moore, the Assistant Secretary of State, instructed R. Henry Norweb, the American chargé d'affaires in Mexico (1 Hackworth, *Digest of International Law* (1940) 639–640):

> It is desired that you advise the Mexican Foreign Office in writing that your Government reserves all rights of whatever nature so far as concerns any effects upon American commerce from enforcement of this legislation purporting to amend existing law so as to extend the territorial waters of Mexico from three miles in breadth to nine miles.

Such statement was made by letter of March 7, 1936, from Josephus Daniels, American Ambassador to Mexico, to General Eduardo Hay, Mexican Foreign Secretary. 99 Cong. Rec. 3623.

When Mexico, in reply, referred to Article V of the Treaty of Guadalupe Hidalgo, February 2, 1848, 9 Stat. 922, as justifying the claim of nine miles (99 Cong. Rec. 3623), Mr. De L. Boal, American chargé d'affaires ad interim, wrote to the Mexican Foreign Secretary on June 3, 1936, reasserting this country's position that the treaty provision extending the international boundary three leagues into the Gulf of Mexico was meant to do nothing more than permit jurisdiction to that distance at that particular point, for the prevention of smuggling (99 Cong. Rec. 3623):

> I have the honor under instructions from my Government to acknowledge Your Excellency's courteous note No. 4002 of May 6, 1936, regarding the extension of the breadth of Mexican territorial waters, and to make the following comment thereon:
>
> The Foreign Office relies upon provisions of article V of the treaty of February 2, 1848, between the United States and Mexico and correspondence concerning such provisions to sustain its position that the decree in question is "just and proper" and that the reservation of rights made by the Government of the United States was unwarranted.
>
> The treaty provisions in question read as follows:

"The dividing line between the two Republics shall begin in the Gulf of Mexico three leagues from land at the mouth of the Rio Grande."

* * * * *

That portion of article V of the treaty of 1848 which the Mexican Foreign Office quotes relates only to the boundary line at a given point and furnishes no authority for Mexico to claim generally that its territorial waters extend 9 miles from the coast. The British note of June 9, 1848, which is quoted by the Mexican Foreign Office recognizes the merely local applicability of the agreement between the United States and Mexico as to the easternmost part of the boundary line, when it states in giving notice that the British Government could not "acquiesce in the extent of maritime jurisdiction assumed by the United States and Mexico," that the giving of such notice is "the more necessary because the Gulf of Mexico is a great thoroughfare of maritime commerce."

Furthermore, this view of the restricted nature of the agreement is strengthened by the statements in the note of the Department of State to the British Minister of August 19, 1848, which is also quoted by the Mexican Foreign Office, and wherein it was said that if for the "mutual convenience" of the United States and Mexico it had been proper to enter into such an arrangement, third parties had no just cause of complaint and that the Government of the United States never intended by the stipulation to question the rights which Great Britain or any other power may possess under the law of nations.

Presumably it is true as indicated by a note sent by this Department to the British Minister of January 22, 1875, that the arrangement thus made between the United States and Mexico with respect to the Gulf of Mexico was designed to prevent smuggling in the particular area covered by the arrangement.

Wholly aside from the question of the boundary line between the two countries, there remains to be considered the total great extent of the Mexican coast and the bordering territorial waters. To say that because the United States agreed that in one area, so far as the United States was concerned, Mexican territorial waters extended 3 leagues from land, therefore Mexico was entitled to claim such an extent of territorial waters adjacent to her entire coastline is a deduction which the terms of article V of the treaty of 1848 do not warrant.

On October 12, 1949, Senator Tom Connally, Chairman of the Senate Foreign Relations Committee, asked Secretary of State Acheson whether the United States recognized the claim of Texas to a boundary three leagues in the Gulf of Mexico, Senate Interior Committee Hearings on S. J. Res. 13, 83d Cong., 1st Sess., 319. Under Secretary of State James E. Webb, writing for the Secretary, replied on December 30, 1949, that the United States recognizes no boundaries beyond three miles in the Gulf of Mexico (*ibid.*, 321–323):

> This Government consistently has adhered to the view that 3 geographical miles constitute the extent of the marginal sea. * * *

> Accordingly, this United States Government claims and asserts an extent of territorial waters in the Gulf of Mexico and elsewhere along its coasts of 3 marine miles. It does not recognize any claim other than its own as binding in the relations of the United States with foreign nations. It does not, therefore, recognize the Texas claim of 3 leagues as binding for international purposes and does not recognize the Texas claim as binding upon Mexico or the nationals of Mexico.
>
> Upon the same principles this Government does not recognize that the United States or its nationals are bound by claims of Mexico to a breadth of territorial waters greater than 3 marine miles. * * *

In connection with the attempted codification of the international law relating to the regime of the high seas, the United States Mission to the United Nations, on January 6, 1950, sent the International Law Commission a memorandum in which it said (U. N. General Assembly, A/CN.4/19 (23 March 1950) 104):

> The United States has from the outset taken the position that its territorial waters extend one marine league, or three geographical miles (nearly 3½ English miles) from the shore * * *. The rule of the three-mile limit has been incorporated in several U. S. Treaties * * *.

On November 12, 1952, the United States protested in the following terms the claims of the Russian government to jurisdiction over more than three miles of territorial waters (99 Cong. Rec. 4084–4085):

> I have the honor to inform your Excellency that the Government of the United States of

America has noted with increasing concern the policy of the Union of Soviet Socialist Republics of asserting territorial jurisdiction over a belt of waters 12 nautical miles in breadth along its coasts and coasts under its control. My Government has also noted that in pursuing this policy the Soviet Union is permitting its authorities to violate the rights of nationals of other states in what are generally recognized as international waters by ordering the seizure and detention of foreign-flag vessels between 3 and 12 nautical miles off the coasts and otherwise denying them access to that area.

It is the view of my Government that the Soviet Union, in thus attempting to appropriate to its exclusive use and control a portion of the high seas, has manifested a willingness to deprive other states, without their consent, of rights under international law. Such conclusion is inescapable in the face of a territorial-waters policy whereunder the Soviet Union would supplant free and untrammeled navigation by all vessels and aircraft over water areas comprising a part of the high seas with such controls as that Government might apply. The Government of the United States of America is not aware of any principle of international law which would support and justify such a policy. In the circumstances, my Government finds it necessary to reiterate that it cannot recognize the action of any government which is calculated to assimilate adjacent high seas to its territory.

The Government of the United States of America therefore protests the Soviet Union's closure of a 12-mile belt of waters contiguous

to its coasts and to the coasts under its control, and reserves all its rights and interests of whatever nature in the high seas outside 3 nautical miles from those coasts.

Addressing Committee VI (the Legal Committee) of the United Nations on December 14, 1956, Edward S. Greenbaum, Alternate United States Representative, repeated this country's strong advocacy of adherence to the three-mile rule. He said, in part (Press Release No. 2557, U. S. Mission to the U. N., Dec. 14, 1956):

> There have been several statements that this three-mile rule is an obsolete one. It has been suggested that because it is an old rule it is no longer valid for the modern world. My Government certainly does not accept this point of view. Our attitude on the breadth of the territorial sea is based in large part upon our traditional and strong adherence to the principle of the freedom of the sea, a principle under which the oceans of the world are to be open freely to the ships of all nations, large and small, and under which principle the strong nations are prevented from asserting their power to control the seas at the expense of the weak. We do not think that changes have occurred on the international scene which require the abandonment of the three-mile rule.[15]

For the purpose of providing a definitive statement of the Government's official position regarding the

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[15] See also *infra*, pp. 91–93, for official statements of representatives of the State Department during the consideration of the proposed Submerged Lands Act.

three-mile rule with particular reference to the present case, Secretary of State Dulles on June 15, 1956, wrote to Attorney General Brownell, summarizing the history of this country's adherence to the three-mile rule and emphasizing that its importance as a national policy remains undiminished, as much with reference to the Gulf of Mexico as elsewhere. That letter is set out in full as Appendix B, *infra*, p. 176. It concludes:

> It is no exaggeration to say that, in view of the serious attacks which are now being made upon the freedom of the seas in various parts of the world, the maintenance of the traditional three-mile policy is more than ever a matter of vital interest to the United States.

This Court has also recognized the adherence of the United States to the three-mile rule. In *Cunard S. S. Co.* v. *Mellon*, 262 U. S. 100, 122, it said:

> It now is settled in the United States and recognized elsewhere that the territory subject to its jurisdiction includes the land areas under its dominion and control, the ports, harbors, bays and other enclosed arms of the sea along its coast and a marginal belt of the sea extending from the coast line outward a marine league, or three geographic miles.

Similarly, in *United States* v. *California*, 332 U. S. 19, 33–34, the Court said:

> It did happen that shortly after we became a nation our statesmen became interested in establishing national dominion over a definite marginal zone to protect our neutrality.

> Largely as a result of their efforts, the idea of a definite three-mile belt in which an adjacent nation can, if it chooses, exercise broad, if not complete dominion, has apparently at last been generally accepted throughout the world * * *. That the political agencies of this nation both claim and exercise broad dominion and control over our three-mile marginal belt is now a settled fact. *Cunard Steamship Co.* v. *Mellon*, 262 U. S. 100, 122–124. And this assertion of national dominion over the three-mile belt is binding upon this Court. See *Jones* v. *United States*, 137 U. S. 202, 212–214; *In re Cooper*, 143 U. S. 472, 502–503.

The Court enumerated some of the actions of the "political agencies" to which it referred (332 U. S. at 33, fn. 18):

> Congressional assertion of a territorial zone in the sea appears in statutes regulating seals, fishing, pollution of waters, etc. 36 Stat. 326, 328; 43 Stat. 604, 605; 37 Stat. 499, 501. Under the National Prohibition Act, territory including "a marginal belt of the sea extending from low-water mark outward a marine league, or 3 geographical miles" constituting the "territorial waters of the United States" was regulated. See U. S. Treas. Reg. 2, § 2201 (1927), reprinted in *Research in International Law*, *supra* [23 A. J. I. L. (Spec. Supp. 1929)] 250; 41 Stat. 305. Anti-smuggling treaties in which foreign nations agreed to permit the United States to pursue smugglers beyond the three-mile limit contained express stipulations that generally the three-mile limit constitutes "the

proper limits of territorial waters.' See *e. g.*, 43 Stat. 1761 (Pt. 2).[16]

3. The location of the Nation's maritime boundary is a political question, as to which the unvarying historic determination by the political branches of the Government must be deemed conclusive.

(a) IT IS A BASIC PRINCIPLE THAT THE COURTS WILL ACCEPT EXECUTIVE DETERMINATIONS IN THE FIELD OF FOREIGN AFFAIRS

For reasons well grounded in the distribution of functions in our Government (*United States* v. *Curtiss-Wright Corp.*, 299 U. S. 304, 319–321; *Chicago & S. Air Lines* v. *Waterman Corp.*, 333 U. S. 103, 111), this Court has always insisted that American courts "should not so act as to embarrass the executive arm in its conduct of foreign affairs." *Republic of Mexico* v. *Hoffman*, 324 U. S. 30, 35; *Ex parte Peru*, 318 U. S. 578, 588; see *United States* v. *Lee*, 106 U. S. 196, 209. Decisions in the field of foreign policy are "of a kind for which the Judiciary has neither aptitude, facilities nor responsibility and

[16] By the provisions of the Submerged Lands Act which, for the purposes of that Act, limit the boundaries of the States in the Gulf of Mexico to three marine leagues (Sec. 2 (b), 67 Stat. 29, 43 U. S. C. (1952 ed.) Supp. III, 1301 (b), Appendix A, *infra*, p. 165) and which provide that the general authorization of a three-mile boundary shall not prejudice the claim of any State to a more extended boundary (Sec. 4, 67 Stat. 31, 43 U. S. C. (1952 ed.) Supp. III, 1312, Appendix A, *infra*, p. 167), Congress did not recognize that a boundary of more than three miles may exist. Those provisions were inserted because certain coastal States argued that they had existing, recognized boundaries extending more than three miles into the Gulf of Mexico, and Congress thought it better policy to leave those claims for judicial determination unaffected by the legislation in any way. (*Supra*, pp. 27–32.)

which has long been held to belong in the domain of political power not subject to judicial intrusion or inquiry." *Chicago & S. Air Lines* v. *Waterman Corp.*, 333 U. S. 103, 111. The courts, therefore, are bound to accept as correct and conclusive all declarations and determinations with respect to foreign affairs and foreign policy, made by the Executive Branch of the Government by formal rulings or official action taken in conducting the foreign affairs or formulating the foreign policy of the nation.

This general principle of judicial abstention from the domain of foreign affairs has been consistently applied in various fields touching on this country's international relations. For instance, the government recognized by the President as the government of a foreign sovereign state will be accepted without question (*Kennett* v. *Chambers*, 14 How. 38, 50–51; *Oetjen* v. *Central Leather Co.*, 246 U. S. 297; *United States* v. *Belmont*, 301 U. S. 324, 330; *Guaranty Trust Co.* v. *United States*, 304 U. S. 126, 132–138), as will the "underlying policy" governing the executive recognition of the foreign government (*United States* v. *Pink*, 315 U. S. 203, 229) and executive recognition or non-recognition of another country's laws and ordinances (*Latvian State Cargo and Passenger Steamship Line* v. *McGrath*, 188 F. 2d 1000 (C. A. D. C.), certiorari denied, 342 U. S. 816; *The Maret*, 145 F. 2d 431 (C. A. 3); *Bernstein* v. *Van Heyghen Freres Societe Anonyme*, 163 F. 2d 246, 249 (C. A. 2), certiorari denied, 332 U. S. 772). Similarly, a political determination of a state of war between

foreign states is binding on the courts. *United States* v. *Palmer,* 3 Wheat. 610, 634–635; *The Divina Pastora,* 4 Wheat. 52, 63–64. A certification by the State Department that a foreign vessel, sued in our courts, is state-owned and immune from seizure automatically leads to a dismissal of the action, whatever view of the vessel's immunity the court would have itself taken. *Ex parte Peru,* 318 U. S. 578, 588–590; *Republic of Mexico* v. *Hoffman,* 324 U. S. 30, 34–36. See *National City Bank* v. *Republic of China,* 348 U. S. 356, 360–361. Certificates by the State Department as to the diplomatic character of foreign representatives sued in our courts are likewise followed without question. *In re Baiz,* 135 U. S. 403, 421–422, 432; *United States* v. *Benner,* 24 Fed. Cas. No. 14,568 (C. C. E. D. Pa.) at 1086. Even treaties from which private rights flow will normally not be interpreted contrary to a definite position taken by the Executive *vis-a-vis* a foreign country, especially where judicial intervention might well cause difficulties in the larger sphere of foreign relations. *Foster* v. *Neilson,* 2 Pet. 253, 307–309; *Williams* v. *Suffolk Insurance Co.,* 13 Pet. 415; *United States* v. *Reynes,* 9 How. 127, 153–155; *Charlton* v. *Kelly,* 229 U. S. 447, 468, 474–476; *Sullivan* v. *Kidd,* 254 U. S. 433, 442; *Factor* v. *Laubenheimer,* 290 U. S. 276, 295; cf. Jaffe, *Judicial Aspect of Foreign Relations* (1933), 71–78. This principle of judicial deference to formal executive determinations applies not only where a foreign nation is directly involved (e. g., *Ex parte Peru,* 318 U. S. 578; *Republic of Mexico* v. *Hoffman,* 324 U. S. 30),

but also where the direct controversy is wholly domestic. E. g., *United States* v. *Belmont*, 301 U. S. 324 (suit to recover money deposited by a Russian corporation with a New York banker); *United States* v. *Pink*, 315 U. S. 203 (suit to recover assets of a Russian insurance company in New York); *Chicago & S. Air Lines* v. *Waterman Corp.*, 333 U. S. 103 (controversy between two domestic airlines).[17]

(b) TERRITORIAL SOVEREIGNTY IS A POLITICAL MATTER AS TO WHICH THE COURTS WILL FOLLOW AN EXECUTIVE DETERMINATION

(*i*) *Foreign territories.*—Who is the sovereign of an area is a political question, the determination of which by one of the political branches of the Government is conclusive on the courts. Thus, in *Oetjen* v. *Central Leather Co.*, 246 U. S. 297, 302, this Court, holding itself bound by an executive determination of which was the lawful government of Mexico, said:

> The conduct of the foreign relations of our Government is committed by the Constitution to the Executive and Legislative— "the political"—Departments of the Government, and the propriety of what may be done in the exercise of this political power is not subject to judicial inquiry or decision.

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[17] See also *The Federalist*, Nos. 3, 80; *Holmes* v. *Jennison*, 14 Pet. 540, 570; *Henderson* v. *Mayor of New York*, 92 U. S. 259, 273; *Chy Lung* v. *Freeman*, 92 U. S. 275, 279–280; *Chinese Exclusion Case*, 130 U. S. 581, 606; *United States* v. *Rauscher*, 119 U. S. 407, 412–414; *Valentine* v. *U. S. ex rel. Neidecker*, 299 U. S. 5, 8; *Hines* v. *Davidowitz*, 312 U. S. 52, 63; *United States* v. *California*, 332 U. S. 19, 34–36.

In *Kennett* v. *Chambers,* 14 How. 38, 50–51, this Court refused to determine for itself whether Texas had in fact become independent of Mexico before 1837, when the Republic of Texas was formally recognized by our Government:

> It is a sufficient answer to the argument to say that the question whether Texas had or had not at that time become an independent state, was a question for that department of our government exclusively which is charged with our foreign relations. And until the period when that department recognized it as an independent state, the judicial tribunals of the country were bound to consider the old order of things as having continued, and to regard Texas as a part of the Mexican territory.

In *Jones* v. *United States,* 137 U. S. 202, 221, the Court held itself bound by the Executive's determination that the island of Navassa was not subject to the jurisdiction of Haiti. The Court said:

> * * * the duty of the judiciary is to decide in accordance with what the President, in the exercise of a discretionary power confided to him by the Constitution and laws, has actually done. As was adjudged, under like circumstances, in *Williams* v. *Suffolk Ins. Co.,* 13 Pet. 415, 420, before quoted, if the executive, in his correspondence with the government of Hayti, has denied the jurisdiction which it claimed over the Island of Navassa, the fact must be taken and acted on by this court as thus asserted and maintained; it is not material to inquire, nor is it the province of the court to

> determine, whether the executive be right or wrong; it is enough to know that in the exercise of his constitutional functions he has decided the question.

Similarly, in *Williams* v. *Suffolk Insurance Co.*, 13 Pet. 415, 420, in holding itself bound by the executive determination that the Falkland Islands were not subject to the jurisdiction of Buenos Aires, this Court said:

> And can there be any doubt, that when the executive branch of the government, which is charged with our foreign relations, shall, in its correspondence with a foreign nation, assume a fact in regard to the sovereignty of any island or country, it is conclusive on the judicial department? And in this view, it is not material to inquire, nor is it the province of the court to determine, whether the executive be right or wrong. It is enough to know, that in the exercise of his constiutional functions, he had decided the question. Having done this, under the responsibilities which belong to him, it is obligatory on the people and government of the Union.

See also *Pearcy* v. *Stranahan*, 205 U. S. 257, 265.

(*ii*) *Territory of the United States.*—This rule is equally applicable to the determination of whether particular areas are within the jurisdiction of the United States. In *Vermilya-Brown Co.* v. *Connell*, 335 U. S. 377, 380–381, regarding the question of whether Bermudan military bases leased from Great

Britain by the United States were subject to the sovereignty of the latter, this Court said:

> * * * is this a political question beyond the competence of courts to decide? * * * Recognizing that the determination of sovereignty over an area is for the legislative and executive departments * * * does not debar courts from examining the status resulting from prior action.

The Court accepted the statement of the Legal Adviser of the State Department that "The arrangements under which the leased bases were acquired from Great Britain did not and were not intended to transfer sovereignty over the leased areas from Great Britain to the United States."

In *Jones* v. *United States*, 137 U. S. 202, *supra*, this Court held itself concluded by an executive determination that the island of Navassa had been brought under the jurisdiction of the United States under the Guano Islands Act of August 18, 1856, 11 Stat. 119, 48 U. S. C. 1411–1419. Similarly, an executive determination that the Isle of Pines was not territory of the United States was held conclusive in *Pearcy* v. *Stranahan*, 205 U. S. 257. Accord, *Foster* v. *Neilson*, 2 Pet. 253, 307–309.

Specifically, executive determinations have been accorded judicial recognition as being decisive of the question of American sovereignty over the waters bordering our coasts. Thus, in *In re Cooper*, 143 U. S. 472, this Court indicated that it would be bound by what it understood to be an executive determination that the jurisdiction of the United States extended to all the waters of the Bering sea east of the

demarcation line described in the Russian cession treaty of March 18/30, 1867 (15 Stat. 539), whether or not within three miles of the shore.[18] Following the same principle, the ruling of Attorney General Randolph that Delaware Bay was inland water within the jurisdiction of the United States (1 Op. A. G. 32 (1793)) was relied on by the Second Court of Commissioners of *Alabama* Claims, in holding the Chesapeake Bay similarly territorial. *The Alleganean: Stetson* v. *United States,* 4 Moore, *International Arbitrations,* 4332, 4341. Similarly, Secretary of State Jefferson's letter to Minister Genet (*supra,* p. 39), asserting jurisdiction over a marginal belt of three miles, was one of the authorities relied on by this Court in *United States* v. *California,* 332 U. S. 19, 33–34, in saying:

> That the political agencies of this nation both claim and exercise broad dominion and control

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[18] After *In re Cooper* was decided in 1892, the United States disavowed all claim to own the waters of Bering sea more than three miles from land. 12 *Fur Seal Arbitration, Proceedings of the Tribunal of Arbitration at Paris, 1893,* Oral Argument for the United States, pp. 107–110 (*supra,* p. 36). This does not, of course, detract from the force of the Court's prior indication that it would consider itself bound by the executive action in the matter. Indeed, the United States was careful to point out to the arbitration tribunal that the courts, in deciding *In re Cooper* and similar cases, had felt themselves bound by the actions of the political branches of the Government, observing that "Lastly, the United States courts, whenever the question has come up before them, have refused to interfere with the executive branch of the Government in its interpretation of the treaty of 1867 and of the laws of Congress enacted on the basis of what the United States acquired by this treaty." 2 *op. cit.,* Case of the United States, p. 84.

> over our three-mile marginal belt is now a settled fact. * * * And this assertion of national dominion over the three-mile belt is binding upon this Court.

As is shown, *supra*, pages 39–62, the political branches of the Government have consistently adhered to the rule that this country has a marginal belt of three miles and no more.[19] Under the circumstances of this case that determination should be considered conclusive here. Section 4 of the Submerged Lands Act, validating state statutes extending maritime boundaries out to three miles from the coast (Appendix A, *infra* p. 167), may be taken as validating, *pro tanto*, Louisiana Act 55 of 1938 (Appendix A, *infra*, p. 170), which purported to extend the state boundary to a distance of twenty-seven miles, or Louisiana Act 33 of 1954 (Appendix A, *infra*, p. 173), purporting to fix the boundary at three leagues. As already noted, it is therefore unnecessary to consider whether Louisiana had a three-mile boundary before those enactments, either by virtue of the general federal claim of three miles or otherwise. It is sufficient to know that, for the purposes of the Submerged Lands Act, the maritime boundary of the State is three miles in the Gulf of Mexico.

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[19] In *United States* v. *California*, 332 U. S. 19, 33–34, fn. 18, the Court recognized Congressional assertions of a three-mile territorial zone.

(C) A STATEMENT BY THE APPROPRIATE EXECUTIVE DEPARTMENT IS THE BEST SOURCE OF INFORMATION ON A POLITICAL QUESTION

As we have already stated, the Secretary of State has furnished the Attorney General with a statement, for presentation to the Court in this case, declaring that the policy of the United States is and has always been to recognize for other nations and to claim for itself territorial jurisdiction over adjacent seas only to a distance of three nautical miles from the coast. (*Supra*, pp. 59–60.) That statement is set out in full in Appendix B, *infra*, pp. 176–180. We have already reviewed the position taken by the State Department throughout the history of the Nation, to show that the position which it now takes is the one which it has always taken on this question. We submit, however, that the Secretary's statement alone is enough to conclude the matter here.

In *In re Baiz*, 135 U. S. 403, the question was whether the petitioner was a foreign diplomatic representative, so as to be entitled to a writ restraining a district court from proceeding with a suit against him. In response to an inquiry, the Second Assistant Secretary of State had written that, in the absence of the minister, "the business of the legation was conducted by Consul General Baiz, but without diplomatic character" (p. 408). The Court said (p. 432): "* * * we do not assume to sit in judgment upon the decision of the executive in reference to the public character of a person claiming to be a foreign minister, and therefore have the right to accept the certificate of the State Department that a party is or is

not a privileged person, *and cannot properly be asked to proceed upon argumentative or collateral proof.*" [Emphasis added.] See also 135 U. S. at 421–422.

United States v. *Benner,* 24 Fed. Cas. No. 14,568 (C. C. E. D. Pa. 1830), was a prosecution for arresting a foreign diplomat, in violation of Section 25 of the Act of April 30, 1790, 1 Stat. 112, 117–118. The United States Attorney introduced a certificate from the Secretary of State, declaring the diplomatic status of the man arrested; and the court thereupon charged the jury (*per* Baldwin, Circuit Justice, p. 1086):

> The evidence of the reception of Mr. Brandis in this [diplomatic] character, is the certificate from the secretary of the state which has been read. * * * the certificate of the secretary under the seal, oath, and responsibility of office, must also be taken as full evidence of the act certified. * * *
>
> * * * Such recognition invests him with the immunities of a minister, in whatever form it may be done, *and no court or jury can require any other evidence of a reception*: we instruct you then as a matter of law, that at the time of the alleged arrest, Mr. Brandis was a minister of Denmark in the character stated in the certificate. [Emphasis added.]

See also *United States* v. *Ortega,* 27 Fed. Cas. No. 15,971 (C. C. E. D. Pa., 1825) and *United States* v. *Liddle,* 26 Fed. Cas. No. 15,598 (C. C. D. Pa., 1808).

The British cases are to be the same effect. In *The Fagernes,* L. R. (1927) P. 311 (C. A.), the court secured, through the Attorney General, a statement from the Home Secretary that the point in question,

in the Bristol Channel, was not within the territorial sovereignty of the Crown. Of this, Atkin, L. J., said (p. 324):

> What is the territory of the Crown is a matter of which the Court takes judicial notice. The Court has, therefore, to inform itself from the best material available; and on such a matter it may be its duty to obtain its information from the appropriate department of Government. *Any definite statement from the proper representative of the Crown as to the territory of the Crown must be treated as conclusive.* [Emphasis added.]

Lawrence, L. J., said (pp. 329–330):

> * * * It is the duty of the Court to take judicial cognizance of the extent of the King's territory and, if the Court itself is unacquainted with the fact whether a particular place is or is not within the King's territory, the Court is entitled to inform itself of that fact by making such inquiry as it considers proper * * *.
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> * * * * * *
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> *In view of this answer, given with the authority of the Home Secretary upon a matter which is peculiarly within the cognizance of the Home Office, this Court could not, in my opinion, properly do otherwise than hold that the alleged tort was not committed within the jurisdiction of the High Court.* [Emphasis added.]

In *Duff Development Co.* v. *Kelantan Government*, L. R. (1924) A. C. 797 (H. L.), where the House of Lords held that the question of defendant's status as an independent sovereign should be settled by in-

quiry of the Colonial Secretary, Lord Sumner said (pp. 823–824):

> The status of foreign communities and the identity of the high personages who are the chiefs of foreign states, are matters of which the Courts of this country take judicial notice. Instead of requiring proof to be furnished on these subjects by the litigants, they act on their own knowledge or, if necessary, obtain the requisite information for themselves. I take it that in so doing the Courts are bound, as they would be on any other issue of fact raised before them, to act on the best evidence and, if the question is whether some new State or some older State, whose sovereignty is not notorious, is a sovereign State or not, *the best evidence is a statement, which the Crown condescends to permit the appropriate Secretary of State to give on its behalf.* [Emphasis added.]

In *Mighell* v. *Sultan of Johore*, L. R. (1894) 1 Q. B. 149 (C. A.), the question was whether the defendant was an independent sovereign, and the court referred the question to the Colonial Office. Kay, L. J. said in his opinion (pp. 161–162):

> * * * the means which the judge took of informing himself as to his [the defendant's] status was by inquiry at the Colonial Office. * * * I confess I cannot conceive a more satisfactory mode of obtaining information on the subject * * * *I think that statement must be taken as conclusive.* [Emphasis added.]

The situation is in no wise changed by the circumstance that the Government is itself a party to the

litigation. Thus, *Jones* v. *United States*, 137 U. S. 202 (*supra*, pp. 66, 68); *United States* v. *Benner*, 24 Fed. Cas. No. 14,568 (C. C. E. D. Pa.) (*supra*, p. 72); *United States* v. *Ortega*, 27 Fed. Cas. No. 15,971 (C. C. E. D. Pa.); and *United States* v. *Liddle*, 26 Fed. Cas. No. 15,598 (C. C. D. Pa.) were all criminal prosecutions by the United States.[20] In each, the court held that it should accept a statement from the Department of State as a conclusive source of information on a political matter of which it was bound to take judicial notice. Cf. *Duff Development Co.* v. *Kelantan Government*, L. R. (1924) A. C. 797 (H. L.), where it was objected that the Colonial Office was in fact directing the litigation and other conduct of the very defendant which it was certifying was an independent sovereign. Lord Sumner, discussing this objection (pp. 823–825), concluded that, nevertheless, since the matter of sovereignty was one for judicial notice, and since a statement from the Colonial Office was the best source of information on the subject, the court was obliged to accept the statement as conclusive. This holding may be considered all the more significant in view of the dual, albeit somewhat fictional, character of the House of Lords as a legislative as well as a judicial body.

[20] The status of the United States as a party was clearly brought out in *United States* v. *Ortega*, 11 Wheat. 467 (1826), where the Court held, with respect to a motion in arrest of judgment, that the case was not within the original jurisdiction of the Supreme Court as one "affecting" an ambassador or other public minister. The Court pointed out that, although the case arose out of an assault on a minister, the actual party plaintiff was the United States.

(d) A STATEMENT FROM THE APPROPRIATE EXECUTIVE DEPARTMENT AS TO THE POLICY WHICH IT HAS FOLLOWED MAY NOT BE SUBJECTED TO CHALLENGE

As indicated by the quotations emphasized in the preceding section, the State Department's declaration is not only the "best evidence," but it is binding and conclusive on the Court, and cannot be controverted by other "evidence" or "proof".

(*i*) In *Vermilya-Brown Co.* v. *Connell*, 335 U. S. 377, 380–381, the Court said:

> Recognizing that the determination of sovereignty over an area is for the legislative and executive departments * * * does not debar courts from examining the status resulting from prior action. * * * In the light of the statement of the Department of State, we predicate our views on the issue presented upon the postulate that the leased area is under the sovereignty of Great Britain and that it is not territory of the United States in a political sense, that is, a part of its national domain.

In *Ex parte Peru*, 318 U. S. 578, the Republic of Peru intervened in an admiralty proceeding to assert ownership of the libeled vessel, and sovereign immunity from suit. The Attorney General filed a certificate from the Department of State, recognizing the sovereign immunity of the ship. The Court said (p. 589):

> The certification and the request that the vessel be declared immune must be accepted by the courts as a conclusive determination by the political arm of the Government that the con-

tinued retention of the vessel interferes with the proper conduct of our foreign relations. Upon the submission of this certification to the district court, it became the court's duty, in conformity to established principles, to release the vessel and to proceed no further in the cause.

In *United States* v. *Benner*, 24 Fed. Cas. No. 14,568 (C. C. E. D. Pa.), as the portion of the opinion quoted above shows, the court ruled that the certificate of the Secretary of State as to the diplomatic status of an individual "must * * * be taken as full evidence * * * and no court or jury can require any other evidence * * *." To the same effect are *United States* v. *Ortega*, 27 Fed. Cas. No. 15,971 (C. C. E. D. Pa.); *United States* v. *Liddle*, 26 Fed. Cas. No. 15,598 (C. C. D. Pa.).

The opinions quoted above (pp. 72–75) show that the British cases take the same view. In *The Fagernes*, L. R. (1927) P. 311 (C. A.), with respect to a statement by the Home Secretary that a certain point in the Bristol Channel was not within the territorial jurisdiction of the Crown, Atkin, L. J. said (p. 324), "Any definite statement from the proper representative of the Crown as to the territory of the Crown must be treated as conclusive." Lawrence, L. J., said on the same subject (p. 330):

> In view of this answer, given with the authority of the Home Secretary upon a matter which is peculiarly within the cognizance of the Home Office, this Court could not, in my opinion, properly do otherwise than hold that

the alleged tort was not committed within the jurisdiction of the High Court.

To the same effect are *Engelke* v. *Musmann,* L. R. (1928) A. C. 433 (H. L.) (diplomatic status of defendant); *Duff Development Co.* v. *Kelantan Government,* L. R. (1924) A. C. 797 (H. L.) (status of defendant as an independent sovereign); *Mighell* v. *Sultan of Johore,* L. R. (1894) 1 Q. B. 149 (C. A.) (same); *Foster* v. *Globe Venture Syndicate,* L. R. (1900) 1 Ch. 811, 813 (sovereignty of Sultan of Morocco over Suss territories).

(*ii*) The conclusive effect of such a statement results from the fact that the statement is not in the nature of "evidence", but rather is an authoritative declaration by the Government regarding a matter within its peculiar competence to determine. "Such information is not in the nature of evidence; it is a statement by the Sovereign of this country through one of his Ministers upon a matter which is peculiarly within his cognizance." *Duff Development Co.* v. *Kelantan Government,* L. R. (1924) A. C. 797, 813 (H. L.) (opinion of Viscount Finlay); see also *Engelke* v. *Musmann,* L. R. (1928) A. C. 433, 442, 457 (H. L.) accord (opinions of Lord Buckmaster and Lord Warrington of Clyffe).[21]

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[21] In the *Engelke* case, Lords Warrington of Clyffe and Buckmaster both indicated that for this reason the official who made the statement was not subject to cross-examination. In the *Duff Development Co.* case, the Lord Chancellor said that when such information is obtained from a Government department "the Court does not permit it to be questioned by the parties" (L. R. (1924) A. C. 797, 805–806). In the *Foster* case, *supra*, the judge thought that information received from the Crown gave the court

The question in such a case is not of discovering an independent fact, but rather of learning what position has been taken by the Government on the subject. Thus, in *Engelke* v. *Musmann,* L. R. (1928) A. C. 433, 455 (H. L.), Lord Phillimore said, "* * * the exact inquiry in this case is not whether the defendant is a member of the Ambassadorial staff but whether he has been accepted and recognized by the Crown as such a member * * *." Similarly, in *Duff Development Co.* v. *Kelantan Government,* L. R. (1924) A. C. 797, 824–825 (H. L.), Lord Sumner said, "* * * it was not the business of the Court to inquire whether the Colonial Office rightly concluded that the Sultan was entitled to be recognized as a sovereign by international law. All it had to do was to examine the communication in order to see if the meaning of it really was that the Sultan had been and was recognized as a sovereign."

(*iii*) Accordingly, whether the determination made by the Government has been right or wrong is immaterial. "* * * the duty of the judiciary is to decide in accordance with what the President, in the excise of a discretionary power confided to him by the Constitution and laws, has actually done. * * * *it is not material to inquire, nor is it the province of the court to determine, whether the executive be right or wrong;* it is enough to know that in the exercise of his constitutional functions he has decided the

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"a knowledge of facts that cannot be disputed," and in *Mighell, supra,* Kay, L. J., indicated that the purpose of securing such information was to avoid a "contentious inquiry."

question." (Emphasis added.) *Jones* v. *United States,* 137 U. S. 202, 221 (American sovereignty over Navassa Island). Accord: *Williams* v. *Suffolk Insurance Co.,* 13 Pet. 415, 420 (Buenos Ayrean non-jurisdiction over the Falkland Islands); *Kennett* v. *Chambers,* 14 How. 38, 50 (jurisdiction of Mexico over Texas before recognition of the Republic of Texas); *Duff Development Co.* v. *Kelantan Government,* L. R. (1924) A. C. 797, 824–825 (H. L.), *supra.*

Thus, in *Rose* v. *Himely,* 4 Cranch 241, 272, where counsel had relied largely on the writings of Vattel in support of the contention that Santo Domingo, then in revolt against France, should be regarded as independent, the Court said, "But the language of that writer is obviously addressed to sovereigns, not to courts. It is for governments to decide, whether they will consider St. Domingo as an independent nation * * *." And in *United States* v. *Ortega,* 27 Fed. Cas. No. 15,971 (C. C. E. D. Pa.), the court (per Washington, Circuit Justice), after pointing out the intolerability of having a judicial decision at variance with the executive practice in a matter of state, continued (pp. 361–362):

> Besides, if it belongs to courts of justice to meddle with these matters, and looking beyond the acts and conduct of the president, to decide a person recognized by him as a foreign minister, to be no minister, surely that branch of the government ought to possess all the lights to guide their judgment which are possessed by the president, and should consequently

be empowered to call for and to expose to public view, the archives of state, and the correspondence of the executive of this nation with foreign nations, in relation to the subject on which the decision is to be made. Yet, who would be wild enough to maintain a proposition so extravagant and absurd?

(For similar reasoning, see *Chicago & S. Air Lines* v. *Waterman Corp.*, 333 U. S. 103, 111).

II

THE ANSWER OF THE STATE OF LOUISIANA RAISES NO GENUINE ISSUE AS TO ANY MATERIAL FACT, AND IS INSUFFICIENT IN LAW

A. REPLY TO FIRST DEFENSE

1. The material allegations of the complaint are subject to judicial notice, and denials of them raise no genuine issue of fact

Louisiana's First Defense (Answer; 1–13) consists primarily of denials or contradictions of allegations of the complaint. As we have shown (*supra*, pp. 22–70) all the material facts alleged in the complaint are subject to judicial notice. Denials of such allegations raise no genuine issue of fact, so as to prevent entry of summary judgment. *Fletcher* v. *Evening Star Newspaper Co.*, 133 F. 2d 395 (C. A. D. C.); see 6 Moore, *Federal Practice* (2d ed. 1953) 2085. Cf. the opinion of Mr. Justice Frankfurter in *United States* v. *John J. Felin & Co.*, 334 U. S. 624, 639: "It is as old as the common law that an allegation purporting to be one of fact but contradicted by common knowledge is not confessed by a demurrer."

Besides denials, Louisiana's First Defense contains

various affirmative allegations of new matter. We believe all such allegations to be immaterial, unsound, or both.

2. The Submerged Lands Act gave Louisiana certain of the rights awarded to the United States by this Court's decree of December 11, 1950, but did not "nullify" the legal theory of that decree

Louisiana alleges (Paragraph III; Answer, 3) that the theory and effect of this Court's decree of December 11, 1950, in *United States* v. *Louisiana,* 340 U. S. 899, have been "nullified and superseded" by the Submerged Lands Act of May 22, 1953, 67 Stat. 29, 43 U. S. C. (1952 ed.) Supp. III, 1301–1315, and the Outer Continental Shelf Lands Act of August 7, 1953, 67 Stat. 462, 43 U. S. C. (1952 ed.) Supp. III, 1331–1343, and that consequently "the States must be held to have always had title to submerged lands and resources." Certainly the effect of the decree has been superseded, to some extent, by the Submerged Lands Act; the purpose of the present suit is to ascertain the extent of that supersedure. Equally clearly, the theory of the decree has not been "nullified" to any extent whatever. We need not even inquire into the power of Congress to "nullify" the legal theory of a judicial decision, for manifestly it had no such intention here. The Submerged Lands Act did not dispose of the entire area covered by the decree, a belt of submerged land extending 27 marine miles from the coast of Louisiana. It disposed of only so much thereof (designated "lands beneath navigable waters") as lay within State boundaries as defined in the Act, but in no event more than 3 leagues from

the Gulf coast. Secs. 2 (a) (2), 2 (b), 3 (a), 3 (b), 4, 67 Stat. 29–31, 43 U. S. C. (1952 ed.) Supp. III, 1301 (a) (2), 1301 (b), 1311 (a), 1311 (b), 1312. Section 9 of the Act clearly reasserted federal rights in the remainder of the continental shelf (67 Stat. 32, 43 U. S. C. (1952 ed.) Supp. III, 1302):

> Nothing in this Act shall be deemed to affect in any wise the rights of the United States to the natural resources of that portion of the subsoil and seabed of the Continental Shelf lying seaward and outside of the area of lands beneath navigable waters; as defined in section 2 hereof, all of which natural resources appertain to the United States, and the jurisdiction and control of which by the United States is hereby confirmed.

Even as to the area granted to the States, the Submerged Lands Act did not merely undo the decree and surrender title to the States. The first proviso of Section 3 (c) allowed to holders of State leases, in some circumstances, a longer tenure than their leases provided, amounting to a term from the effective date of the Act equal to the lease term remaining unexpired on December 11, 1950. 67 Stat. 31, 43 U. S. C. (1952 ed.) Supp. III, 1311 (c). In imposing such a condition, Congress was necessarily relying on, rather than abnegating, the adjudicated rights of the United States in the submerged lands. As this Court has held, the Submerged Lands Act was an exercise of the power of Congress to dispose of property of the United States. *Alabama* v. *Texas* and *Rhode Island* v. *Louisiana*, 347 U. S. 272.

The same view was expressed in the debates on the Act by Senator Daniel of Texas, one of the co-authors and most ardent supporters of the Act. He said (99 Cong. Rec. 4080–4081):

> We do not ask Congress to overrule the Supreme Court of the United States, although, I think, the Court was incorrect. We can and do accept the decisions of the Court as the interpretation of the law as it exists today, but, by the same token, the Congress of the United States, in placing its interpretation on the Constitution and in deciding the equities can write the law for the future differently from that which the Court has found it to be at this time.
>
> That is what we propose in Senate Joint Resolution 13. * * *

In the case of *Superior Oil Co.* v. *Fontenot,* 213 F. 2d 565 (C. A. 5), certiorari denied, 348 U. S. 837, cited by Louisiana (Paragraph III, Answer 3), the question was whether a lessee from the State could recover State severance taxes paid under protest on oil and gas produced from the 3-mile marginal belt between June 5, 1950, and May 22, 1953. Judgment for the defendant was affirmed on four independent grounds, one of which was that the Submerged Lands Act either conferred on the State and its lessee a title which related back, or nullified this Court's decree so that the State must be held to have had title from the beginning.[22] The court did not purport to decide

[22] Other grounds of decision were that a lessee cannot dispute the title of his lessor, that the plaintiff would be unjustly en-

which was the correct analysis of the statute. In any event, the decision involved only the effect of the Act as to land within its geographic scope. The plaintiff's lease lay in the 3-mile belt, admittedly within the scope of the Act, and the court had no occasion to consider how far seaward the Act applied. The decision is wholly irrelevant to the present case.

3. The Outer Continental Shelf Lands Act asserts federal rights of an extraterritorial character and does not extend State or National boundaries beyond three miles from the coast

Louisiana alleges (Paragraph III; Answer, 3) that the Outer Continental Shelf Lands Act "asserts the extent of the territorial boundaries of the United States as including the Outer Continental Shelf." Even if true, that would be irrelevant. Louisiana's rights under the Submerged Lands Act are limited to lands within State boundaries; and there is no allegation that the Outer Continental Shelf Lands Act extended the boundaries of the State (as it clearly did not; see Sec. 4 (a) (3), 67 Stat. 462, 43 U. S. C. (1952 ed.) Supp. III, 1333 (a) (3), Appendix A, *infra*, p. 169. Moreover, the Outer Continental Shelf Lands Act did not take effect until August 7, 1953, whereas the grant made by the Submerged Lands Act was limited to State boundaries existing when the State entered the Union or approved by Congress before May 22, 1953, the effective date of the Submerged Lands Act. As reported, the bill made similar pro-

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riched if allowed to escape the tax while keeping the oil, and that payment of the tax was expressly required by the provision of Section 3 (c) of the Act requiring that a lessee, to maintain his lease, must pay "all rents, royalties, and other sums payable between June 5, 1950, and the effective date hereof, under such lease and the laws of the State * * *."

vision with respect to State boundaries subsequently approved by Congress, but that was deleted on Senator Holland's motion. 99 Cong. Rec. 4114–4116.[23]

Louisiana's allegation, in addition to being irrelevant, is unsound. The Outer Continental Shelf Lands Act does not extend the territorial boundaries of the United States to include the outer continental shelf. What it does assert is that

> It is hereby declared to be the policy of the United States that the subsoil and seabed of the outer Continental Shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition as provided in this Act.

Section 3 (a), 67 Stat. 462, 43 U. S. C. (1952 ed.) Supp. III, 1332 (a). It has always been recognized that this asserts a special jurisdiction, extraterritorial in its nature, and does not constitute an extension of the territorial boundary of the Nation. That is shown by the qualified character of the language just quoted.

Legislative history shows complete recognition of the extraterritorial nature of our claim to the outer continental shelf. When the Outer Continental Shelf Lands Act was under consideration, Senator Ellender of Louisiana said (99 Cong. Rec. 7223),[24] "Techni-

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[23] Section 4 of the Act does make it applicable to subsequent extensions of State boundaries out to the 3-mile limit, where States have not claimed so far heretofore. 67 Stat. 31, 43 U. S. C. (1952 ed.) Supp. III, 1312. That is not involved here, as the Government concedes Louisiana's right to three miles under the Act.

[24] This was the debate on S. 1901. The Outer Continental Shelf Lands Act as enacted is designated H. R. 5134, but its provisions are those of S. 1901, substituted by a Senate amendment. 99 Cong. Rec. 7264.

only, this bill would not extend the boundaries of the United States but would only extend the jurisdiction and control of the United States over the resources and subsoil of the seabed."

Senator Long of Louisiana offered an amendment which would have extended State and national boundaries to the edge of the continental shelf. For the present language of Section 3 (a), quoted above (*supra*, p. 86), it would have substituted the following (99 Cong. Rec. 7232):

> SEC. 3. Jurisdiction over outer Continental Shelf: (a) It is hereby declared that the seabed and subsoil of the outer Continental Shelf, the natural resources therein contained, and any structures which are erected on such subsoil or seabed for the purpose of exploring for, developing, removing, and transporting the natural resources of such subsoil or seabed, are within the territory of the United States.

Speaking in support of his amendment, Senator Long said (*ibid*.):

> The amendment would extend the boundaries of the United States, and the boundaries of the coastal States to include the seabed and subsoil of the outer Continental Shelf. * * *
>
> This amendment is in keeping with the better recognized practice of international law of extending the boundaries of a littoral nation to include the seabed and subsoil of the outer Continental Shelf. Thus far Great Britain and the other nations of the British Empire are among the 18 nations of this world that pursue the concept that a nation should extend its bound-

> ary to include the seabed and subsoil on the Continental Shelf without affecting the rights of navigation or fishing in the waters above the seabed.
>
> * * * * *
>
> Authorities in international law could see no serious objection to extension of national boundaries to include the seabed and subsoil. Insofar as any foreign nation is concerned, it amounted to a distinction without a difference whether we claimed the seabed and subsoil to be within our boundary or whether we declared the seabed and subsoil to be subject to the jurisdiction and control of the United States.

Senator Long's amendment was rejected. 99 Cong. Rec. 7236. That was perhaps primarily due to its provision for extension of State boundaries; nevertheless, the fact had been brought out clearly that the bill as introduced did not extend federal boundaries, and no change was made in that respect. Section 3 (a) was enacted exactly as it was reported by the Senate Committee. See S. Rept. No. 411, 83d Cong., 1st Sess., page 15.

In the course of the House debate on the Outer Continental Shelf Lands Act, Congressman Yorty of California said (99 Cong. Rec. 4888):

> Mr. Chairman, I cannot understand how anyone can seriously find fault with the action the committee has taken in considering the areas inside of historic State boundaries and [outside?] such boundaries in two separate bills because actually I think we all recognize that two different sets of principles are involved

in these areas. Inside the historic boundary we are dealing with an area that always belonged to the States until the decision of the Supreme Court cast doubt upon the title, but when you go beyond the historic seaward boundaries of the States you are dealing with an area that is altogether different. It is not only outside of the States, it is outside of the United States. We are dealing with it only on the legal basis of a proclamation of the President of the United States claiming, not title to the lands outside of the historic State and national boundaries, but rather claiming only the right to extract the resources of the seabed and the subsoil and to the edge of the Continental Shelf. Historically, legally, and in every way you are dealing with an entirely different proposition when you deal with the area known as the Continental Shelf.

That statement was made with reference to H. R. 5134 as originally introduced in the House.[25] That bill was in the form of an amendment to the Submerged Lands Act, and would have amended Section 9 of that Act to read, in part, as follows (99 Cong. Rec. 4891):

SEC. 9. Jurisdiction over outer Continental Shelf: (a) It is hereby declared to be the policy of the United States that the natural resources of the subsoil and seabed of the outer Continental Shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition as provided in this act. Federal laws now in effect or here-

[25] See fn. 24, *supra*, p. 86.

after adopted shall apply to the entire area of the outer Continental Shelf. * * *

* * * * * *

This act shall be construed in such manner that the character as high seas of the waters above the outer Continental Shelf and the right to their free and unimpeded navigation and navigational servitude shall not be affected.

In thus limiting the continental shelf claim to the natural resources, rather than extending it to the seabed itself, H. R. 5134 conformed to Section 9 of the Submerged Lands Act, 67 Stat. 32, 43 U. S. C. (1952 ed.) Supp. III, 1302, and Presidential Proclamation No. 2667 of September 28, 1945, 59 Stat. 884 (Appendix C, *infra*, p. 181), by which this Nation first asserted rights in the outer continental shelf. That proclamation was entitled, "Policy of the United States With Respect to the Natural Resources of the Subsoil and Sea Bed of the Continental Shelf." It read, in part:

Whereas it is the view of the Government of the United States that the exercise of jurisdiction over the natural resources of the subsoil and sea bed of the continental shelf by the contiguous nation is reasonable and just * * *

Now, therefore, I, Harry S. Truman, President of the United States of America, do hereby proclaim the following policy of the United States of America with respect to the natural resources of the subsoil and sea bed of the continental shelf.

* * * the Government of the United States regards the natural resources of the subsoil and sea bed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States,

> subject to its jurisdiction and control. * * * The character as high seas of the waters above the continental shelf and the right to their free and unimpeded navigation are in no way thus affected.

Designation of this as a "policy" rather than an extension of boundary, and reference to the resources as "appertaining to the United States, subject to its jurisdiction and control," rather than being incorporated into the United States, strongly imply that no boundary extension was involved. This is corroborated by the specific statement that the overlying water retains its character as high seas. Indeed, since the jurisdiction asserted was only over the natural resources, and not over the seabed itself, it would have been altogether impossible to describe it in terms of a boundary extension.

At the Senate Interior Committee hearings on the Submerged Lands Act, Jack B. Tate, Deputy Legal Adviser of the Department of State, testifying for that Department, said (Senate Committee on Interior and Insular Affairs, Hearings on S. J. Res. 13, 83d Congress, 1st Session, 1053, 1056):

> The claim made by the United States in the Presidential proclamation of September 28, 1945, to jurisdiction and control of the national [natural?] resources of the subsoil and seabed of the Continental Shelf off its coast is one more example of the compatibility between the United States position on the 3-mile limit and the protection of its interests. This Government did not claim sovereignty in this proc-

lamation or an extension of its boundaries beyond the limit of three miles of territorial waters. Indeed it specified in the proclamation that the character as high seas of the waters above the Continental Shelf and the right to their free and unimpeded navigation are in no way affected.

* * * * *

The Federal Government's claim as to territorial waters has always been 3 miles. The Federal Government's claim to the Continental Shelf has always been jurisdiction and control.

The same distinction was drawn by Thruston B. Morton, Assistant Secretary of State, in a letter written on March 6, 1953, to Senator Henry M. Jackson, which Senator Jackson put in the record of the Senate Interior Committee hearings on the Submerged Lands Act. Assistant Secretary Morton wrote, in part (Senate Committee on Interior and Insular Affairs, Hearings on S. J. Res. 13, 83d Cong., 1st Session, 1087, 1088):

This Nation has always supported the concept that the sovereignty of coastal States in seas adjacent to their coasts (as well as the lands beneath such waters and the airspace above them) is limited to a belt of 3 miles width, and has vigorously objected to claims of other States to broader limits. In international relations, the territorial claims of the States and of the Nation are indivisible. This Nation now supports the 3-mile limit and the claims of the States cannot exceed those of the Nation. * * *

This Nation has traditionally taken the position that it was not prevented by international law from reasonably exercising its jurisdiction beyond the 3-mile limit for certain purposes. Legislation is now in effect whereby this Government exercises jurisdiction over foreign as well as domestic vessels for purposes of customs control (Antismuggling Act of August 5, 1935, 49 Stat. 517, 19 U. S. C. 1701–1711). This exercise of jurisdiction is recognized in international practice. Exercises of jurdisdiction in the high seas for fiscal, sanitation, or navigation purposes are not infrequent. The claim made by the United States in the Presidential proclamation of September 20, 1945, to jurisdiction and control of the national resources of the subsoil and seabed of the Continental Shelf off its coast was without precedent. In keeping with its traditional position, however, this Government carefully refrained from suggesting that it was claiming sovereignty, or an extension of its territorial waters or boundaries, and, indeed, specified in the proclamation that the character as high seas of the waters above the Continental Shelf and the right to their free and unimpeded navigation were in no way affected.

In the Report of the Senate Interior Committee on the Submerged Lands Act (S. Rept. No. 133, 83d Cong., 1st Sess.), it was said (page 9):

The complexity of the problem presented by the assumption by the United States of jurisdiction and control over the subsoil and seabed of the outer Continental Shelf is immediately

apparent from even a cursory examination of the Presidential proclamation. The declaration is limited to jurisdiction and control of the resources of the land mass; as stated in the proclamation—

> the character as high seas of the waters above the Continental Shelf and the right to their free and unimpeded navigation are in no way thus affected.

Clearly, we have here neither absolute sovereignty nor absolute ownership.

It must follow that the interest of the United States is, from a national and an international standpoint, politically and legally, *sui generis*.

In the congressional debates on the Submerged Lands Act it was clearly recognized that the proclamation of September 28, 1945, did not assert an extension of our boundary. Thus, Congressman Hays of Ohio said (99 Cong. Rec. 2503):

> Any attempt to extend the boundaries of the United States or any of its constituent States to the edge of the Continental Shelf would result in the most serious problems involving the freedom of the seas. The careful wording of the 1945 Presidential proclamation has protected the interests of the United States to date, deviations from this would not be acceptable.

Congressman Feighan of Ohio emphasized the same point (99 Cong. Rec. 2518):

> In the President's Continental Shelf proclamation of 1945 which related to the sea bed and subsoil under the high seas beyond the marginal belt, the President was careful not to assert

> title, but merely jurisdiction and control. This area is clearly outside of territorial waters and thus in a domain where international considerations prevail.

The same point was brought out in the Senate. Senator Sparkman of Alabama said (99 Cong. Rec. 4086):

> Every President from George Washington to President Eisenhower, every Secretary of State from Thomas Jefferson to John Foster Dulles—each of them, without exception—has insisted on the 3-mile limit; and our country has opposed efforts on the part of any other nation to extend its limits beyond 3 miles. * * * Mr. Tate, who was representing the Secretary of State and the Department of State in the presentation before the committee, * * * called attention to the fact that the Government of the United States had made a claim for the resources out to the edge of the Continental Shelf. * * *. But Mr. Tate differentiates between our right to take those resources and the right of ownership.

Senator Douglas of Illinois said (99 Cong. Rec. 4113):

> If * * * we do not push ownership beyond the 3-mile limit, but if we assert Federal control, which is a different matter, out from the 3-mile limit, we can then with good grace protect our fishermen as they fish close to the coast, but beyond the 3-mile limit, off Mexico, Canada, and possibly Siberia.

The Outer Continental Shelf Lands Act did broaden the subject matter of the claim, to include the seabed

and subsoil instead of merely the natural resources therein. Sec. 3 (a), 67 Stat. 462, 43 U. S. C. (1952 ed.) Supp. III, 1332 (a). However, it made no change in the character of the rights claimed, but retained exactly the former language, saying,

> It is hereby declared to be the policy of the United States that the subsoil and seabed of the outer Continental Shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition as provided in this Act.

The report of the Senate Interior Committee said, with reference to this change (S. Rept. 411, 83d Cong., 1st Sess., p. 7):

> It will be noted that the proclamation asserted only that the Government of the United States "regards the natural resources of the subsoil and seabed" of the Continental Shelf as "appertaining to" the United States. The provisions of S. 1901 as reported carry this limited control a necessary step forward and extend the jurisdiction and control of the United States to the seabed and subsoil themselves.

Plainly, the change was only in the subject matter of the claim and not in its nature. This is fully borne out by the Senate debates on the Outer Continental Shelf Lands Act quoted above (*supra*, pp. 86–89).

It is thus apparent that both Congress and the Executive have consistently and purposefully maintained a distinction between our claim of rights in the outer continental shelf and an extension of the na-

tional boundary. The distinction should not be disregarded here, where Congress has used "boundary" as a term of art in defining the extent of the rights granted to the States.

4. This Court's decree of December 11, 1950, entitles the United States to an accounting for moneys received by Louisiana after June 5, 1950, from submerged lands seaward of the State boundary

Louisiana alleges (Paragraph III; Answer, 4) that neither the Submerged Lands Act nor the Outer Continental Shelf Lands Act requires the State to make any payment to the United States. That allegation is correct but immaterial. The right of the United States to an accounting rests on this Court's decree of December 11, 1950, 340 U. S. 899, which as we have pointed out remains in full force and effect, except to the limited extent that rights under it were relinquished by the Submerged Lands Act. That relinquishment was limited to claims arising out of operations in the submerged lands that were granted to the State by the Act. Sec. 3 (b), 67 Stat. 30, 43 U. S. C. (1952 ed.) Supp. III, 1311 (b), Appendix A, *infra*, p. 166. And as already shown (*supra*, pp. 25–26), that grant was limited to lands lying within the State boundary as it existed when the State entered the Union or as approved by Congress before May 22, 1953, but not more than three leagues from the coast.

5. The Submerged Lands Act was a transfer of part of the rights awarded by this Court's decree of December 11, 1950, not a disclaimer of all such rights

Louisiana alleges (Paragraph IV; Answer, 4) that by the Submerged Lands Act, Congress recognized

that the United States had no right, title or interest in the lands, minerals and other things underlying the Gulf of Mexico, and relinquished all its rights therein, if any. As we have shown (*supra*, pp. 82–85), the Submerged Lands Act was not a disclaimer of the rights adjudicated by this Court, but rather was a grant of a limited portion thereof.

6. The Submerged Lands Act and Outer Continental Shelf Lands Act do not affect Louisiana's right, if any, to claim jurisdiction over the continental shelf and are not unconstitutional in limiting its assertions of title thereto

Louisiana alleges (Paragraph IV; Answer, 5–7) that insofar as the Submerged Lands Act and the Outer Continental Shelf Lands Act restrict the right of the State to extend its boundaries or title to the submerged lands and minerals to the edge of the continental shelf, and insofar as they assert any right therein in the United States, they are unconstitutional for four reasons. All of these contentions are unsound.

(a) THE TERMS OF THE LOUISIANA PURCHASE DID NOT GIVE THE STATE A CONSTITUTIONAL RIGHT TO ASSERT SUCH JURISDICTION AND TITLE

First, Louisiana asserts (Answer, 5–6) that under the treaty for the purchase of Louisiana, 8 Stat. 200, the United States was bound to "incorporate the purchased territory of Louisiana into the Union according to the principles of the federal constitution, and to maintain the inhabitants of Louisiana in their property in the territory with all its rights and appurtenances in the same manner as they had been acquired

by the French Republic, and to the same extent as when this territory was in the hands of Spain, and that it had when France possessed it;" that Congress was bound by the treaty to hold the territory in trust for the States to be formed; that when it created the State it could not and did not attempt to retain any federal domain seaward therefrom; and that by subsequent boundary extensions Congress and the Executive could not deprive Louisiana of its sovereign rights and claims to the continental shelf. This argument must be rejected for several independent reasons.

(*i*) The fact that a statute is inconsistent with a prior treaty does not render the statute unconstitutional. Congress has power by statute to supersede a treaty. *Stephens* v. *Cherokee Nation,* 174 U. S. 445, 483.

(*ii*) Louisiana apparently seeks to invoke Article III of the treaty, 8 Stat. 202, which provided:

> The inhabitants of the ceded territory shall be incorporated in the Union of the United States, and admitted as soon as possible, according to the principles of the Federal constitution, to the enjoyment of all the rights, advantages and immunities of citizens of the United States; and in the mean time they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess.

As this Court said, in *New Orleans* v. *De Armas,* 9 Pet. 224, 235:

> This article obviously contemplates two objects: one, that Louisiana shall be admitted

> into the Union, as soon as possible, upon an equal footing with the other states; and the other, that, until such admission, the inhabitants of the ceded territory shall be protected in the free enjoyment of their liberty, property and religion. * * * But this stipulation ceased to operate, when Louisiana became a member of the Union, and its inhabitants were "admitted to the enjoyment of all the rights, advantages and immunities of citizens of the United States."

Since the treaty provision has "ceased to operate," the State is no longer in a position to invoke it.

(*iii*) As we will show (*infra*, pp. 111–124), the outer continental shelf was not part of the territory which the United States acquired from France; therefore the treaty rights relied on by Louisiana never applied to it.

(*iv*) In any event, the treaty provision for admitting the inhabitants of Louisiana to the privileges of national citizenship "according to the principles of the Federal constitution" did not require that any one of the States to be formed out of the purchased territory should have greater jurisdictional or proprietary rights in the adjoining ocean than were enjoyed by other States. On the contrary, it required the State of Louisiana to be admitted on an equal footing with other States. *New Orleans* v. *De Armas*, 9 Pet. 224, 235. The maritime jurisdiction of all States is necessarily limited to that claimed by the United States, which is three miles from the coast (*supra*, pp. 39–62). The treaty did not give the State any

right to have more when it entered the Union, or to extend its boundaries thereafter beyond those claimed by the United States. As to proprietary rights in the marginal sea bed, the applicable constitutional principle is that all States entered the Union on an equal footing, with no such rights. *United States* v. *Texas*, 339 U. S. 707, 718; *United States* v. *Louisiana*, 339 U. S. 699. The Submerged Lands Act is an enlargement, not a restriction, of the State's rights in that respect. In granting proprietary rights to the State, Congress had complete discretion as to the extent of the rights to be granted. *Ashwander* v. *Tennessee Valley Authority*, 297 U. S. 288, 336.

(b) THE SUBMERGED LANDS ACT AND OUTER CONTINENTAL SHELF LANDS ACT DO NOT VIOLATE ANY RIGHTS GUARANTEED TO LOUISIANA BY ARTICLE IV, SECTIONS 3 AND 4, OF THE CONSTITUTION

Second, Louisiana alleges (Answer, 6) that recognition of federal ownership of the submerged lands and resources of the outer continental shelf violates Sections 3 and 4 of Article IV of the Constitution. This Court has already held that the United States had complete rights in the marginal seabed and that the State had no proprietary rights therein. *United States* v. *Louisiana*, 339 U. S. 699. That decision necessarily determined that the Constitution does not require a different result.

(c) THE SUBMERGED LANDS ACT AND OUTER CONTINENTAL SHELF LANDS ACT DO NOT VIOLATE ANY RIGHTS GUARANTEED TO LOUISIANA BY THE NINTH AMENDMENT TO THE CONSTITUTION

Third, Louisiana alleges (Answer, 6–7) that the Submerged Lands Act and Outer Continental Shelf

Lands Act violate the Ninth Amendment to the Constitution, to the extent that they assert federal proprietary rights in the outer continental shelf or restrict the boundaries or title of Louisiana therein. The proprietary rights asserted by those Acts have already been adjudicated by this Court. *United States* v. *Louisiana*, 339 U. S. 699. Neither Act purports to restrict State boundaries. They do restrict the submerged area granted to the State and assert federal control over the submerged area retained by the United States. As already noted, Congress has power to restrict such a grant to whatever limits it chooses. *Ashwander* v. *Tennessee Valley Authority*, 297 U. S. 288, 330–331.

(d) THE SUBMERGED LANDS ACT AND OUTER CONTINENTAL SHELF LANDS ACT DO NOT VIOLATE ANY RIGHTS GUARANTEED TO LOUISIANA BY THE TENTH AMENDMENT TO THE CONSTITUTION

Fourth, Louisiana alleges (Answer, 7) that the Submerged Lands Act and Outer Continental Shelf Lands Act violate the Tenth Amendment to the Constitution, insofar as they assert federal ownership in the submerged lands of the outer continental shelf, because Louisiana has never relinquished such rights to the United States. Since Louisiana has never had such rights, *United States* v. *Louisiana*, 339 U. S. 699, the question of relinquishment does not arise.

7. Louisiana's boundary is not necessarily coextensive with that of the United States

Louisiana alleges (Paragraph V; Answer, 7) that its southern boundary has always necessarily been coextensive with the southern boundary of the United

States acquired by the Louisiana Purchase. This allegation is both unsound and immaterial. It is immaterial because, as we shall show (*infra*, pp. 111–124), the boundary acquired by the United States from France was at the shore. The allegation is unsound because there is no reason why a State cannot have a more restricted seaward boundary than does the United States. For example, in *United States* v. *California*, 332 U. S. 19, 23, the Court took note of the fact that the federal boundary claim of three *nautical* miles extended seaward .45 of an English mile beyond the boundary of the State of California, established by its constitution at three *English* miles from the shore. And the original Atlantic Coast states did not all include a three-mile belt within their boundaries (see Brief for the United States In Support of Motion for Judgment, *United States* v. *California*, Oct. Term 1946, No. 12 Orig., pp. 93 *et seq.*). The Submerged Lands Act recognized that, by 1953, some states might not yet have extended their boundaries to the three-mile limit, by providing that all states might do so and approving such an extension.

8. Federal leasing in the disputed area has been authorized by Congress

Louisiana alleges (Paragraph VII; Answer, 8) that in issuing mineral leases on the submerged land now in suit, federal officials acted "without statutory authority and in violation of positive enactments of the United States Congress." The issuance of such leases is authorized by the Outer Continental Shelf Lands Act, Section 8 (a) of which provides, in part

(67 Stat. 468, 43 U. S. C. (1952 ed.) Supp. III, 1337 (a)):

> In order to meet the urgent need for further exploration and development of the oil and gas deposits of the submerged lands of the outer Continental Shelf, the Secretary [of the Interior] is authorized to grant to the highest responsible qualified bidder by competitive bidding under regulations promulgated in advance, oil and gas leases on submerged lands of the outer Continental Shelf which are not covered by leases meeting the requirements of subsection (a) of section 6 of this Act. * *

The term "outer Continental Shelf" is defined by Section 2 (a) of the Act (67 Stat. 462, 43 U. S. C. (1952 ed.) Supp. III, 1331 (a)), as follows:

> The term "outer Continental Shelf" means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 2 of the Submerged Lands Act (Public Law 31, Eighty-third Congress, first session), and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

The only question, then, as to the authority of federal officials to issue leases is whether the area being leased was included in the grant made to the State by the Submerged Lands Act. As we have shown (*supra*, pp. 25–81), the grant there made to the State was in terms limited to a maximum extent of three leagues from the coast, and was in fact, we submit, limited to three marine miles therefrom.

9. Louisiana is not entitled to any proprietary rights in the seabed more than three miles from the coast by reason of its boundary extension statutes of 1938 and 1954

Louisiana alleges (Paragraph VIII; Answer 3-11) that the extent of its territorial jurisdiction in the Gulf of Mexico is that of an independent nation, and is coextensive with that of the United States; that the United States cannot deprive Louisiana of the benefit of an extension of national sovereignty into contiguous territory; that Presidential Proclamation No. 2667, the Submerged Lands Act and the Outer Continental Shelf Lands Act have extended national jurisdiction over the subsoil, seabed and natural resources of the continental shelf and are unconstitutional to the extent that they seek to divest Louisiana of its title to and right to possession of the seabed, subsoil, and natural resources of the continental shelf and restrict the right of Louisiana to extend its boundaries to the edge of the continental shelf; and that Louisiana Act 55 of 1938 and Act 33 of 1954, declaring the State boundary to be extended to include large parts of the continental shelf, are in accord with international law and the policies of the United States, at least insofar as they relate to the subsoil, seabed and natural resources of the Gulf of Mexico.

Like most of the Answer's other allegations, these allegations too are wholly immaterial to the present issues. This case involves rights of a proprietary nature. In 1950, this Court held that all such rights in the submerged lands and resources of the marginal seabed belonged to the United States and not to Louisiana, regardless of where the State boundary

might be located. *United States* v. *Louisiana*, 339 U. S. 699, 705. Thereafter, by the Submerged Lands Act, Congress granted those rights, within certain limits, to Louisiana. Territorial boundaries are material here only to the extent that Congress used them as the measure of that grant of proprietary rights. As such measure, Congress in its discretion chose to use the State boundary as it existed when the State entered the Union, or as extended at any time to a distance of three miles from the coast, or as approved by Congress before May 22, 1953 (the effective date of the Act), but in no event extending more than three leagues from the coast. Thus, Louisiana's claims that it has extended its boundary are immaterial unless the asserted extensions comply with the conditions laid down by Congress. Obviously, extensions based on statutes of 1938 and 1954 were not in existence when Louisiana entered the Union in 1812. Neither is it alleged that they were approved by Congress before May 22, 1953; and the fact is that they were not so approved. It follows that, whatever might be their effectiveness as extensions of territorial boundaries, they could afford the State no ground for claiming the proprietary rights now in issue, more than three miles from the coast.

Also, these allegations by Louisiana are largely incorrect. We agree that the seaward boundaries of the State and the United States are both three miles from the coast. Since the national boundary has not been extended further (*supra*, pp. 85–97), it seems academic to consider whether, if such an extension

were made, Louisiana would have a constitutional right to conform to it. However, we find nothing in the Constitution conferring such a right, and history does not seem to support it. In the past, acquisitions of "territory contiguous to * * * any border or coastal state" (Paragraph VIII (a); Answer, 9) has not led to corresponding enlargement of such States. The acquisition of Florida from Spain in 1819 (8 Stat. 252) did not inure to the benefit of Georgia, nor did the acquisition of New Mexico, Arizona, and California from Mexico in 1848 (9 Stat. 922) inure to the benefit of Texas. Even as to submerged lands, Louisiana's own history indicates that they need not be included in adjacent States. Louisiana's western boundary, as described in her Act of Admission (2 Stat. 701) is the middle of the Sabine river, but the western boundary of the United States at that point, as fixed by the Treaty of February 22, 1819, with Spain (8 Stat. 252, 254-256), the Treaty of January 12, 1828, with Mexico (8 Stat. 372, 374) and the Convention of April 25, 1838, with the Republic of Texas (8 Stat. 511), was the western bank of the Sabine. The western half of the river bed was never included in Louisiana, however, and a few years after Texas was admitted into the Union, Congress permitted Texas to annex the western half of the river bed. Act of July 5, 1848, 9 Stat. 245.

Neither the Submerged Lands Act nor the Outer Continental Shelf Lands Act purports in any way to restrict boundary extensions by coastal States; it is therefore unnecessary to consider further the allegation (Paragraph VIII (c); Answer, 10) that they are

unconstitutional to the extent that they seek to do so. The Submerged Lands Act does, of course, restrict the extent to which it uses State boundaries as the measure of the submerged area granted; but we repeat that there can be no question of the power of Congress to fix limits on the amount of property it gives away. And the allegation that the Submerged Lands Act and Outer Continental Shelf Lands Act are unconstitutional in asserting federal ownership of the subsoil, seabed and natural resources of the continental shelf is plainly unsound, in view of this Court's holding that the United States held all rights therein, to the complete exclusion of the State. *United States* v. *Louisiana,* 339 U. S. 699.

Louisiana alleges (Paragraph VIII (d); Answer, 11) that its boundary extension statutes of 1938 and 1954 are in accord with national policy and international law, at least insofar as they relate to the subsoil, seabed and natural resources under the Gulf of Mexico. That is not so. As we have shown (*supra,* pp. 39–81), it is settled national policy to limit boundary claims of this country to three miles from the coast, and to maintain that international law does not permit the assertion of greater claims. While we do recognize and assert rights to control exploitation of the seabed and its resources beyond that limit, this Court has held that such rights belong in the first instance to the Federal Government and not to the States, *United States* v. *Louisiana,* 339 U. S. 699; and the Submerged Lands Act, Section 9, 67 Stat. 32, 43 U. S. C. (1952 ed.) Supp. III, 1302, and the Outer Continental Shelf

Lands Act, Section 3, 67 Stat. 462, 43 U. S. C. (1952 ed.) Supp. III, 1332, manifest a clear national policy to retain such rights in the Federal Government exclusively.

In this connection, Louisiana quotes (Paragraph VIII (d); Answer, 11) a passage from this Court's opinion in *United States* v. *Louisiana*, 339 U. S. 699, which it construes as a recognition of the effectiveness of the State's boundary extension. However, the quotation is incomplete. The entire sentence, italicizing the portion omitted by the State in its answer, reads (339 U. S. at 705–706):

> *So far as the issues presented here are concerned,* Louisiana's enlargement of her boundary emphasizes the strength of the claim of the United States to this part of the ocean and the resources of the soil under that area, including oil.

The issue there presented was, of course, whether the United States or the State was entitled to exploit the resources of the area, and the federal claim there referred to was a claim against the State. The context of the sentence was a discussion of the importance of exclusive federal control in areas of international concern. Thus, the sentence in fact means that Louisiana's ill-considered excursion into this high-seas area emphasized the force of the Government's claim that the area should be considered exclusively a federal one.

10. Decision of this case involves application of the foreign policy established for the United States by the political branches of the Government

Louisiana also alleges (Paragraph IX; Answer, 12) that no matter of foreign policy is here involved, because the outer boundaries of the United States have already been settled by the political branches of the Government. This allegation misconstrues the position of the United States. We do not ask the Court to formulate foreign policy with respect to boundaries; on the contrary, we respectfully submit that it has no authority to do so, but must accept such policy as adopted by the political branches of the Government. We fully agree with Louisiana that what is involved here is a domestic dispute as to rights to exploit the resources of the continental shelf. However, Congress has chosen to allocate those rights by reference to State boundaries. Those boundaries, in turn, are necessarily limited by national boundaries. Thus it becomes necessary to discover, as a limiting factor, what are the national boundaries established by the political branches of the Government. We believe that this Court is the forum in which that inquiry can most appropriately be conducted.

11. Louisiana has not acquired rights against the United States in the outer continental shelf by exercise of ownership or jurisdiction thereover

Finally, Louisiana alleges in its First Defense (Paragraph IX; Answer, 13) that it has exercised jurisdiction and ownership over the submerged lands continuously, without any interference prior to 1949.

So far as ownership is concerned, *United States* v. *Louisiana,* 339 U. S. 699, 702, 705, established that the State's exercise of acts of ownership was unavailing against assertion of the rights of the Federal Government in the area. So far as jurisdiction is concerned, any boundary claimed to have been established thereby beyond the three-mile limit is irrelevant because not existing when the State entered the Union or approved by Congress before May 22, 1953. Submerged Lands Act, Section 2 (b), 67 Stat. 29, 43 U. S. C. (1952 ed.) Supp. III, 1301 (b). Moreover, we consider it too plain for argument that a State cannot by any means extend its exterior boundary beyond the boundary claimed by the United States.

For the foregoing reasons, we submit that Louisiana's First Defense raises no genuine issue as to any material fact, and is insufficient in law.

B. REPLY TO SECOND DEFENSE

1. Neither France nor Spain claimed territorial jurisdiction seaward of the shore of Louisiana

Louisiana's Second Defense (Answer, 13–17) is that Louisiana, as originally claimed for France by La Salle, extended into the Gulf of Mexico to the 27th parallel (about 120 miles south of the southernmost islands or shore of Louisiana); that the same extent into the Gulf was continuously claimed by France and successively transferred to Spain, back to France, and to the United States; and that the Act admitting the State of Louisiana to the Union likewise embraced the Gulf of Mexico to the 27th

parallel. The claim is historically and legally unsound.

It is apparent from La Salle's proclamation of April 9, 1682, that it was the mouth of the Mississippi which defined the limit of his claim. His expression of the mistaken belief that the river mouth, which he had visited just before issuing the proclamation, was at "about" the 27th parallel did not show any intention to claim to that parallel, however far out in the Gulf it might actually be. His claim was that

> I * * * have taken and do take possession * * * of this country of Louisiana, seas, harbors, ports, bays, adjacent straits and all the nations, peoples, provinces, cities, towns, villages, mines, minerals, fisheries, rivers, streams, comprehended in the extent of the said Louisiana, from the mouth of the great river Saint Louis on the east side, otherwise called Ohio, Olighinsipou or Chukagoua, and this with the consent of the Chaouesnons, Chicachas and other peoples living there with whom we have made alliance, as also along the river Colbert, or Mississippi, and streams which discharge therein, from its source beyond the country of the Sioux or of the Nadouesioux, and this with their consent and of the Ototantas, Illinois, Matsigamea, Arkansas, Natchez, Koroas, who are the most important nations that live there, with whom we have made alliance in person or through people in our behalf, as far as its mouth in the sea or gulf of Mexico, about 27 degrees of the elevation of the north pole as far as the mouth of the Palms, on the assurance that we have had from all these nations

that we are the first Europeans who have descended or ascended the said river Colbert.[26]

The *procès-verbal*, or official report, of Jacques de la Métairie, notary of the La Salle expedition, shows that the proclamation was issued after the mouth of the Mississippi had been reached and the party had returned upstream only far enough to find solid ground for the erection of a monument, and that La Salle then thought that they were at about the 27th parallel:

> We continued the navigation until the 6th [of April, 1682], when we arrived at three channels by which the river Colbert discharges in the sea. We camped on the bank of the western channel, at three leagues or thereabouts from the mouth.

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[26] * * * Je * * * ay pris et prends possession * * * de ce pays de la Louisiane, mers, havres, ports, bayes, destroits adjacents et toutes les nations, peuples, provinces, villes, bourgs, villages, mines, minières, pesches, fleuves, rivières, compris dans l'estendue de ladite Louisiane, depuis l'emboucheure du grand fleuve Saint-Louis du costé de l'est, appelé autrement Ohio, Olighinsipou ou Chukagoua, et ce du consentement des Chaouesnons, Chicachas et autres peuples y denteurant avec qui nous avons fait alliance, comme aussy le long du fleuve Colbert, ou Mississipi, et rivières qui s'y deschargent, depuis sa naissance au delà du pays des Sioux ou des Nadouesioux, et ce de leur consentement et des Ototantas, Islinois, Matsigamea, Akansas, Natchez, Koroas, qui sont les plus considérables nations qui y demeurent, avec qui nous avons fait alliance par nous ou gens de nostre part, jasqu'à son embouchure dans la mer ou golfe de Mexique, environs les 27 degrez d'élévation du pôle septentrional jusques à l'emboucheure des Palmes, sur l'asseurance que nous avons eue de toutes ces nations que nous sommes les premiers Européens qui ayent descendu ou remonté ledit fleuve Colbert." 2 Margry, *Découvertes et Établissements des Français dans L'Ouest et dans le Sud de L'Amérique Septentrionale* (1877) 191–192.

> On the 7th, M. de La Salle went to explore it and visit the shores of the neighboring sea, and M. de Tonty the large central channel. These two mouths having been found fine, wide and deep, on the 8th we reascended a little above the confluence to find a dry place that was not overflowed. At about 27 degrees of the elevation of the pole, were prepared a column and a cross * * *.[27]

The proclamation was uttered, with appropriate solemnities, at that point. Clearly, La Salle intended to claim to the mouth of the river, he erected the monument as near thereto as he could find solid ground for the purpose, and he believed that he was then at about the 27th degree of latitude.

Thirty years after La Salle's proclamation, on September 14, 1712, Louis XIV granted to his secretary, Antoine de Crozat, letters patent for exclusive trading rights in Louisiana. That grant described Louisiana as beginning *at the shore of the sea.* It provided, in the last paragraph of its preamble and in its first article:

> * * * We have by these Presents signed by our hand, established & do establish the said Sieur

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[27] "On continua la navigation jusques au 6e, qu'on arriva aux trois canaux par lesquels le fleuve Colbert se descharge dans la mer. On campa sur le bord du canal occidental, à trois lieues ou environ de l'emboucheure. Le 7e, M. de La Salle le fut reconnoistre et visiter les costes de la mer voisine, et M. de Tonty le grand canal du milieu. Ces deux emboucheures s'estant trouvées belles, larges et profondes, le 8e on remonta un peu au-dessus du confluent pour trouver un lieu sec et qui ne fust point inondé. Environ à 27 dégrez d'élévation du pôle, on fit préparer une colonne et une croix * * *." 2 Margry, *op. cit.* 186, 190–191.

Crozat to conduct alone the commerce in all the Lands possessed by Us & bounded by new Mexico, & by those of the English of Carolina all the establishments, Ports, Harbors, Rivers & principally the Port & Harbor of Dauphine Island formerly called Massacre, the River Saint Louis formerly called Mississipy *from the shore of the Sea* as far as the Illinois, together with the Rivers saint Philippe formerly called the Missourys, & saint Hierosme formerly called Ovabache with all the Countries Regions, Lakes in the Lands & the Rivers which fall directly or indirectly into this part of the River Saint Louis.

First Article.

We will that all the said Lands, Regions, Rivers, Streams & Islands be and remain comprised under the name of the government of Louisiana, which shall be dependent on the general government of new France, to which it shall remain subordinate * * * .[28]

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[28] Emphasis added. This is a translation of the French text (from a copy in the Henry E. Huntington Library, San Marino, California) as separately printed at Paris, in 1712, by Muguet, Chief Printer to the King and Parlement ("Lettres Patentes du Roy, Qui permettent au Sieur Crozat Secretaire du Roy, de faire seul le Commerce dans toutes les Terres possedées par le Roy, & bornées par le nouveau Mexique & autres. * * * A Paris, Chez la Veuve François Muguet & Hubert Muguet, Premier Imprimeur du Roy & de son Parlement, ruë de la Harpe, aux trois Rois. 1712."):

* * * Nous avons par ces Presentes signées de nostre main, établi & établissons ledit Sieur Crozat pour faire seul le commerce dans toutes les Terres par Nous possedées & bornées par le nouveau Mexique, & par celles des Anglois de la Caroline tous les établissemens, Ports, Havres, Rivieres & principalement le Port & Havre de l'Isle Dauphine appellée autrefois de Massacre, le Fleuve Saint Loüis autrefois

Here we see the king giving a comprehensive definition of the area to be included in the province of Louisiana, and describing it as beginning at the seashore. Plainly, he did not consider that the province extended any distance whatever into the Gulf of Mexico.

When France transferred Louisiana to Spain by the secret treaty of November 3, 1762, the cession was described only as "all the country known under the name of Louisiana, as well as New Orleans and the island in which that place stands." See 13 Cong.

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appellé Mississipy depuis le bord de la Mer jusq' aux Illinois, ensemble les Rivieres saint Philippe autrefois appellée des Missourys, & saint Hierosme autrefois appellée Ovabache avec tous les Pays Contrées, Lacs dans les Terres & les Rivieres qui tombent directement ou indirectement dans cette partie du Fleuve Saint Loüis.

Article Premier.

Voulons que toutes lesdites Terres, Contrées, Fleuves, Rivieres & Isles soient & demeurent compris sous le nom du gouvernement de la Loüisiane, qui sera dépendent du gouvernement general de la nouvelle France, auquel il demeurera subordonné * * * .

There was another French edition of the letters patent, printed at Paris, "Chez la Veuve Saugrain & Pierre Prault, à l'entrée du Quay de Gêvres, du côté de Pont au Change, au Paradis," undated but apparently of about the same period, which differs from the foregoing in that, in lieu of "depuis le bord de la Mer" (from the shore of the Sea) it reads, "depuis le port de la Mer"—that is to say, "from the seaport." However, "bord de la Mer" seems to have been generally accepted as the correct text. It was followed in the *Recueil d'Arrests* (Amsterdam, 1720) and has been used by translators. See, *e. g.*, Hermann, *The Louisiana Purchase* (G. P. O. 1898), 15 ("from the edge of the sea"); Greenhow, *Memoir, Historical and Political, on the Northwest Coast of North America* (S. Doc. No. 174, 26th Cong., 1st Sess., 1840), 150 ("from the seacoast"). But even the alternative version, "from the seaport", clearly would have referred to a coastal starting point and not one any distance out in the Gulf of Mexico.

Deb. (24th Cong., 2d Sess.) Pt. 2, App., 226. However, by the Seventh Article of the treaty between France, Spain and Great Britain, executed at Paris on February 10, 1763, it was agreed that

> for the future, the confines between the dominions of his Britannic majesty, and those of his most Christian [*i. e.*, French] majesty, in that part of the world, shall be fixed irrevocably by a line drawn along the middle of the river Mississippi, from its source to the river Iberville, and from thence, by a line drawn along the middle of this river, and the lakes Maurepas and Pontchartrain, *to the sea;* and for this purpose, the most Christian king cedes in full right, and guaranties to his Britannic majesty, the river and port of the Mobile, and every thing which he possesses, or ought to possess, on the left side of the river Mississippi, except the town of New Orleans, and the island in which it is situated, which shall remain to France * * *. [Emphasis added.]

15 *Parliamentary History of England,* 1291, 1296. This conformed to the sixth article of a preliminary convention executed by the same powers at Fontainebleau on November 3, 1762, the date of the secret cession of Louisiana to Spain. *Ibid.*, 1241, 1244. See 13 Cong. Deb. (24th Cong., 2d Sess.) Pt. 2, App., 227. Whatever one may think of the degree of candor shown by his most Christian Majesty and his Most Catholic Majesty in thus describing as property of the former what had already been secretly transferred to the latter, the fact remains that the three European powers

interested in North America here joined in defining the eastern limit of Louisiana as terminating at the sea.

It is very natural that we thus find no intention, up to this point, to make a territorial claim in the Gulf of Mexico, for, as this Court has observed in the case where the whole subject of the marginal sea was given most exhaustive consideration, the concept of territorial ownership of the marginal sea did not arise in international law until after the time when this country achieved its independence. *United States* v. *California*, 332 U. S. 19, 32–33.

By Article 3 of the Treaty of San Ildefonso, October 1, 1800, Spain retroceded to France

> the colony or province of Louisiana, with the same extent that it now has in the hands of Spain, and that it had when France possessed it; and such as it should be after the treaties subsequently entered into between Spain and other states.[20]

The Treaty of April 30, 1803, by which France ceded Louisiana to the United States, recited the foregoing terms of the Treaty of San Ildefonso, and provided (8 Stat. 202):

> The First Consul of the French Republic * * * doth hereby cede to the said United States * * * the said territory with all its rights and

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[20] "* * * la Colonie ou Province de la Louisiane, avec la même étendue qu'elle a actuellement entre les mains de l'Espagne, et qu'elle avoit lorsque la France la possédoit, et telle qu'elle doit être d'après les traités passés subséquemment entre l'Espagne et d'autres Etats." See 8 Stat. 202, 203.

> appurtenances, as fully and in the same manner as they have been acquired by the French Republic, in virtue of the above-mentioned treaty, concluded with his Catholic Majesty.
>
> Art. II. In the cession made by the preceding article are included the adjacent islands belonging to Louisiana, all public lots and squares, vacant lands, and all public buildings, fortifications, barracks, and other edifices which are not private property. * * *

The specific reference to islands, in Article II, would have been unnecessary if the cession had extended to the 27th parallel, which is 120 miles south of all islands. It plainly shows that the parties, with their attention particularly directed to the question of the Gulf of Mexico, regarded the cession as including the islands therein and nothing more.

Thereafter, the United States engaged in a long dispute with Spain over the eastern and western limits of Louisiana as so ceded. The Spanish views as to the southern limit, although it was not in issue, also appear incidentally from that correspondence. Thus, Pedro Cevallos, the Spanish Foreign Minister, writing on April 13, 1805, to Charles Pinckney and James Monroe, the American Envoys, said (*American State Papers;* 2 Foreign Relations 662):

> It follows, therefore, that the boundary between the provinces of Texas and Louisiana ought to be by a line which, *beginning at the Gulf of Mexico,* between the river Caricut, or Cascassia, and the Armenta, or Marmentoa, should go to the north * * *. [Emphasis added.]

Louis de Onis, the Spanish Ambassador, writing to John Quincy Adams, Secretary of State, on December 29, 1817, said with respect to the situation existing at the time of the Treaty of San Ildefonso (*American State Papers;* 4 Foreign Relations 453):

> At that time Louisiana was, in the hands of Spain, precisely what it was when ceded by France, in virtue of the treaty of 1764. In the same treaty its eastern boundaries are marked by a line running eastward from Manchac Point, thence following the course of the river Iberville, and dividing the lakes Borgne, Pontchartrain, and Maurepas, and *finally terminating at the Gulf of Mexico,* without leaving the smallest doubt as to the true points of the frontier. [Emphasis added.]

Writing again to Secretary Adams on March 23, 1818, de Onis said (*American State Papers;* 4 Foreign Relations 484):

> That which has been said by Don Pedro Cevallos and by me, and which can admit of no doubt, is, that the western boundaries of Louisiana have always been notorious and acknowledged between Spain and France; *from the ocean* by a line drawn between the rivers Mermento and Calcasia, running by Arroyo Hondo, between the Adaes and Natchitoches, crossing the Rio Roxo, (Red River,) and ascending towards the north. [Emphasis added.]

As the foregoing shows, both France and Spain always regarded Louisiana as being bounded on the south by the Gulf of Mexico, and not as extending any distance therein. Thus, there is no foundation

for any contention that the United States acquired from France an area extending into the Gulf to the 27th parallel, or any other distance.

2. Great Britain did not recognize Spanish jurisdiction in the Gulf of Mexico by the Treaty of 1790

Louisiana further alleges (Answer, 14–15) that a Spanish claim to the Gulf of Mexico as far as the 27th parallel was recognized by Britain in the Escurial Treaty of October 28, 1790, by mutual agreement "to boundaries, both in North and South America, extending ten leagues seaward into the Pacific Ocean and the South Seas, which latter seas included the Gulf of Mexico." The allegation is fallacious in every particular.

Since the 27th parallel is 40 leagues or more from the coast of Louisiana, it does not appear how a claim to that distance would be "recognized" by an agreement for boundaries extending 10 leagues seaward. More importantly, the treaty referred to was not a recognition of maritime boundaries at all; it was merely an agreement that, to prevent smuggling, British ships would not approach within 10 leagues of Spanish settlements. The relevant provisions were:

> III. And in order to strengthen the bonds of friendship, and to preserve in future a perfect harmony and good understanding between the 2 Contracting Parties, it is agreed that their respective Subjects shall not be disturbed or molested either in navigating or carrying on their Fisheries in the Pacific Ocean, or in the South Seas, or in landing on the Coasts of those Seas,

in places not already occupied, for the purpose of carrying on their commerce with the Natives of the Country, or of making Settlements there; the whole subject, nevertheless, to the restrictions and provisions specified in the 3 following Articles.

IV. His Britannic Majesty engages to take the most effectual measures to prevent the Navigation and Fishery of his Subjects in the Pacific Ocean, or in the South Seas, from being made a pretext for illicit trade with the Spanish Settlements; and, with this view, it is moreover expressly stipulated, that British Subjects shall not navigate, or carry on their Fishery in the said Seas, within the space of 10 sea leagues from any part of the Coasts already occupied by Spain.[30]

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[30] Translation appearing in *British and Foreign State Papers. 1812–1814* (London, 1841) Vol. I, Part I, 663, 665–666. The parallel official French text also appears there, as follows:

III. Et, afin de resserer les liens de l'amitié, et de conserver à l'avenir une parfaite harmonie et bonne intelligence entre les 2 Parties Contractantes, il est convenu que les Sujets respectifs ne seront point troublés ni molestés, soit en naviguant ou en exerçant leur Pêche dans l'Océan Pacifique, ou dans les Mers du Sud, soit en débarquant sur les Côtes qui bordent ces Mers, dans des endroits non déjà occupés, afin d'y exercer leur commerce avec les Naturels du Pays, ou pour y former des Etablissemens. Le tout sujet néanmoins aux restrictions et aux provisions qui seront spécifiées dans les 3 Articles suivans.

IV. Se Majesté Britannique s'engage d'employer les mesures les plus efficaces pour que la Navigation et la Pêche de ses Sujets dans l'Océan Pacifique, ou dans les Mers du Sud, ne deviennent point le prétexte d'un commerce illicite avec les Etablissemens Espagnols; et, dans cette vûe, il est en outre expressément stipulé, que les Sujets Britanniques

Moreover, the agreement was confined to the Pacific Ocean and the South Seas. Louisiana's allegation (Answer, 15) that the South Seas included the Gulf of Mexico, is wholly unsupportable. The term South Sea or South Seas referred to the Pacific Ocean, particularly the South Pacific, or sometimes to the waters of the southern hemisphere:

> South Sea. Name given to the Pacific by its discoverer, Vasco Nunez de Balboa (1513). As the Isthmus of Panama, where he crossed it, runs nearly east and west, the Pacific forms its southern shore: hence, to the Spaniards on the Isthmus it was the South Sea. Until the 19th century this was the common name, sometimes employed in a special manner for the South Pacific. It is still occasionally used. (3 *Century Cyclopedia of Names* (1954) 3666.)
>
> South sea, *n.* [Sp., *el Mar del Sur.*] 1. The Pacific Ocean;—so called when discovered in 1513 by Vasco Nunez de Balboa, Spanish governor of Darien, who first beheld it when looking south.
>
> 2. *pl.* The seas of the Southern Hemisphere; esp., the south Pacific Ocean. (*Webster's New International Dictionary* (2d ed., unabridged, 1956) 2406.)
>
> South Sea. A name formerly applied to the Pacific Ocean and the China Sea. (21 *New International Encyclopaedia* (1930) 326.)

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ne navigueront point, et n'exerceront pas leur Pêche dans les dites Mers, à la distance de 10 lieues maritimes d'aucune partie des Côtes déjà occupées par l'Espagne.

South Sea, name formerly given to the Pacific Ocean. (*Macmillan's Modern Dictionary* (1938) 1152:)

South Sea; *Span. El Mar del Sur* * * *. The Pacific Ocean—so named by Balboa on his discovery of it in 1513. In the plural, South Seas, the waters of the Southern Hemisphere, esp. the South Pacific Ocean. (*Webster's Geographical Dictionary* (1949) 1070.)

South Sea, a name formerly applied to the Pacific Ocean. * * * (*Lippincott's Gazetteer of the World* (Heilprin ed., 1922) 1740.)

We find only one reference work, *Murray's New English Dictionary* (1919), recognizing additional applications for the term, and they are plainly irrelevant here (the dagger marks obsolete usages):

South Sea * * *.

†1.a. The sea to the south of Europe; the Mediterranean. *Obs.*

†b. The English Channel. *Obs.*

2. *pl.* The seas of the southern hemisphere; *esp.* the South Pacific Ocean.

3. The South Pacific Ocean; † the Pacific Ocean as a whole (obs.). (*Op. sit.*, vol. IX, Pt. 1, p. 485.)

The Gulf of Mexico is no part of the Pacific Ocean. It and indeed the entire Caribbean Sea lie well north of the Equator. The area here under discussion lies north of the 27th parallel, and so is removed from the Equator by 27 degrees, or 1620 nautical miles. It could not possibly be considered water of the Southern Hemisphere. It follows that it was not within the scope of the provision of the Escurial Treaty.

3. French and Spanish claims of maritime jurisdiction would not determine the boundary of the State of Louisiana

Even if France and Spain had claimed to the 27th parallel and Britain had recognized that claim, those circumstances would be entirely unavailing to Louisiana here. As we have shown (*supra*, pp. 65–67), the extent of the territory subject to the jurisdiction of a foreign nation is a political question, and a decision reached on that subject by the political branches of a government is binding upon the courts of that government. That rule was announced by this Court long ago, in a case involving the precise question of the extent of the territory of Louisiana as acquired by the United States from France. *Foster* v. *Neilson*, 2 Pet. 253. The issue there was whether the Louisiana Purchase was bounded on the east by the Iberville river,[31] or extended east to the Perdido river (the present western boundary of Florida). That depended, in turn, on whether the area between the two rivers was included in the retrocession of Louisiana to France by Spain, by the Treaty of San Ildefonso. At issue was the validity of land grants made by Spain in the area between 1803, the date of the Louisiana Purchase, and 1819 when the United States acquired Florida from Spain. Both Spain and France asserted that the disputed area had not been transferred to France by the Treaty of San Ildefonso; but the President and Congress took a different view, and this Court held that it was bound to conform to their decision.

[31] Now called Bayou Manchac. See *Louisiana* v. *Mississippi*, 202 U. S. 1, 37; Adams, *Atlas of American History* (1943), plates 49 and 50.

Chief Justice Marshall, speaking for the Court, said (2 Pet. at 307):

> In a controversy between two nations, concerning national boundary, it is scarcely possible, that the courts of either should refuse to abide by the measures adopted by its own government. * * * The judiciary is not that department of the government, to which the assertion of its interests against foreign powers is confided; and its duty commonly is, to decide upon individual rights, according to those principles which the political departments of the nation have established. If the course of the nation has been a plain one, its courts would hesitate to pronounce it erroneous. We think, then, however individual judges might construe the treaty of St. Ildefonso, it is the province of the court to conform its decisions to the will of the legislature, if that will has been clearly expressed.

We have shown (supra, pp. 42–60) that the Government of the United States, acting through the Executive as that branch of the Government charged with foreign affairs, has consistently refused to recognize that any nation can possess a belt of territorial waters wider than three nautical miles. The courts of the United States are bound to accept that view. Here, then, it must be held that neither France nor Spain had a marginal belt wider than three miles along the coast of Louisiana, and that the United States consequently could not have received, and did not receive, from France a boundary more than three miles from the coast, at the most.

4. Louisiana's Act of Admission did not include by implication a boundary more than three miles from the coast

Phrasing its point in another fashion, Louisiana alleges (Answer, 15–16) that, since the Gulf area between the shore and the 24th parallel was not expressly excepted by Congress, it was included by implication, if not in terms, by the description of Louisiana in the Act of Admission, 2 Stat. 701, as "bounded by the said Gulf * * * including all islands within three leagues of the coast", and that ownership of the submerged lands in the sea is an attribute of sovereignty which likewise passed to the State in the absence of specific provision to the contrary.

The answer to this contention is the same we have already given. The implication as to boundary rests on the supposition that that portion of the Gulf had been acquired by the United States from France. As we have proved (*supra*, pp. 111–124) the territory acquired from France was bounded by the shore; consequently, that grant cannot support any implication that the State of Louisiana was given a greater extent. If the State did receive a marginal belt by implication, it was a three-mile belt accorded by the policy of the United States; but we consider it unnecessary to decide whether or not the State had such a belt upon entering the Union, as we concede that it does now. In any event, ownership of the submerged land of the marginal sea would not pass to the State, as such ownership is an attribute of national rather than State sovereignty. *United States* v. *Louisiana*, 339 U. S. 699.

C. REPLY TO THIRD DEFENSE

1. Louisiana *v.* Mississippi *did not hold that the boundary of Louisiana extends three leagues into the Gulf of Mexico*

In this defense, Louisiana first alleges (Paragraph 1; Answer, 17) that its seaward boundary extends at least three leagues into the Gulf of Mexico, and in support thereof asserts "that its southern boundary has been adjudged by this Court to be a water boundary in the open sea, that its limits extend at least three marine leagues seaward from its coast line (*Louisiana* v. *Mississippi*, 202 U. S. 1, 50 L. Ed. 913) and said limits are drawn on the diagrams which are made a part of the Court's decision in that case." It is not clear how much of the foregoing allegation is attributed to the decision in *Louisiana* v. *Mississippi;* but it is perfectly clear that the decision in that case does not in fact give any support to Louisiana's claim of a three-league boundary.

The issue there was the location of the boundary between Louisiana and Mississippi in Lake Borgne and Mississippi Sound. Those are inland waters, as the Court specifically held in applying the thalweg rule to them. 202 U. S. at 48, 50-53. The decree traces the boundary through Mississippi Sound "between Cat Island and Isle à Pitre, *to the Gulf of Mexico,* as delineated on the following map * * *." (202 U. S. at 58; emphasis added.) The map shows only as far east as the 89th meridian, within Chandeleur Sound, which, as Louisiana will presumably concede, is itself inland water. Thus, there is nothing in the decree to indicate how far, if at all, the

boundary extends *into* the Gulf, or what width of territorial waters is within the gulfward boundaries of the two States. The opinion makes it clear that that question was not reached (202 U. S. at 52):

> Questions as to the breadth of the maritime belt or the extent of the sway of the riparian States require no special consideration here. The facts render such discussion unnecessary.

Louisiana's reference (Answer, 17) to its limits in the Gulf as "drawn on the diagrams which are made a part of the Court's decision in that case" is somewhat misleading. Those diagrams were exhibits to Louisiana's bill, and were included as such in the statement of the case which precedes the arguments of counsel and opinion of the Court. 202 U. S. at 4, 5. They are drawn on a small scale,[22] and the red line marking the State boundary was obviously drawn with a very free hand—even on the land portions it obviously is used to emphasize rather than depict a boundary. The gulfward boundary which it shows is not alike on the two diagrams, and varies from about nine to 18 nautical miles from the shore. The Court referred to the two diagrams (202 U. S. at 36–37) as showing, respectively, the limits of the State before and after the addition, made by the Act of April 14, 1812, 2 Stat. 708, of the area between the Iberville and Pearl rivers. In the light of what has been said

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[22] According to the legend, the scale on Diagram No. 1 was one inch to 86 miles, and on Diagram No. 2, one inch to 90 miles. As reproduced in the report, both appear to be on a scale of one inch to 74 nautical miles or 85.21 statute miles.

above, that casual reference clearly was not an endorsement, let alone an adjudication, of the erratic, excessive and inconsistent gulfward boundaries sketched on those diagrams, which were not at all in issue in the case.

2. Louisiana is not entitled to the submerged lands and resources within a marginal belt measured from the Coast Guard line

Louisiana next alleges (Paragraphs 2–6; Answer, 18–20) that its boundary is three leagues seaward of the line of demarcation between its inland waters and the open sea, and that the line established by the Commandant of the Coast Guard (33 C. F. R. 82.95, 82.103) constitutes that line of demarcation and has been so recognized by Louisiana Act 33 of 1954 (La. Acts, 1954, p. 63). In our view, this allegation is immaterial, unsound, and relates to an issue that is not before the Court on the Government's present motion for judgment.

(*a*) The judgment sought by the complaint (p. 8) and motion (p. 1) is one declaring the rights of the United States as against Louisiana in the submerged lands and minerals lying more than three miles seaward from the ordinary low-water mark and outer limit of inland waters. Such a decree will determine whether the limit of the State's submerged lands should be predicated on a base line so defined (*i. e.*, as distinguished from the State's absolute claim to the 27th parallel) and, if so, at what distance therefrom. For reasons stated below (*infra*, pp. 158–161), we believe that the first step in the decision of this case should be entry of a decree of that character. There-

after, supplementary proceedings may appropriately be had to resolve any disputes that may arise, in view of the particular terms of the decree entered, regarding its application to the terrain at any particular point. The question of whether the Coast Guard line is the proper base line should be deferred, in this view, for consideration along with all other contentions that may be made as to the proper identification of such base line as the decree may designate. Nevertheless, we shall discuss here briefly our reasons for believing the Coast Guard line should be rejected as the base line. It is not clear whether Louisiana relies on the Coast Guard line as having some operative effect to create new rights in the State, or merely as evidence of what has been the outer limit of the inland waters of the State ever since it entered the Union; but we submit that, viewed in either light, the line can give no support to Louisiana's claims.

(*b*) Clearly, the Coast Guard line is not an interpretation of the extent of Louisiana's existing inland waters. This was emphatically declared by the man best qualified to know, the Commandant of the Coast Guard himself, at the time of promulgating the line. His order establishing the line included the following (18 Fed. Reg. 7893):

> The establishment of descriptive lines of demarcation is solely for purposes connected with navigation and shipping. Section 2 of the act of February 19, 1895, as amended (33 U. S. C. 151), authorizes the establishment of these descriptive lines primarily to indicate where different statutory and regulatory rules for

> preventing collisions of vessels shall apply and must be followed by public and private vessels. These lines are not for the purpose of defining Federal or State boundaries, nor do they define or describe Federal or State jurisdiction over navigable waters. Upon the waters inshore of the lines described, the Inland Rules and Pilot Rules apply. Upon the waters outside of the lines described, the International Rules apply.

Even if the Commandant had misconstrued his authority, it is obvious that a line which he formulated without regard to jurisdictional boundaries can have no weight as an interpretation of those boundaries. However, we submit that he was correct in his belief that the statute under which he acted provided for nothing more than the establishment of navigational rules. That statute, the Act of February 19, 1895, 28 Stat. 672, was entitled,

> An Act To adopt special rules for the navigation of harbors, rivers and inland waters of the United States, except the Great Lakes and their connecting and tributary waters as far east as Montreal, supplementary to the Act of August nineteenth, eighteen hundred and ninety, entitled "An Act to adopt regulations for preventing collisions at sea."

Relevant provisions of the Act were:

> That on and after March first, eighteen hundred and ninety-five, the provisions of sections forty-two hundred and thirty-three, forty-four hundred and twelve, and forty-four hundred and thirteen of the Revised Statutes and regu-

lations pursuant thereto shall be followed on the harbors, rivers and inland waters of the United States.

* * * * *

SEC. 2. The Secretary of the Treasury is hereby authorized, empowered and directed from time to time to designate and define by suitable bearings or ranges with light houses, light vessels, buoys or coast objects, the lines dividing the high seas from rivers, harbors and inland waters.

Section 2, *supra*, is now codified as 33 U. S. C. 151. The authority which it conferred on the Secretary of the Treasury was successively transferred to the Secretary of Commerce and Labor (Act of February 14, 1903, Sec. 10, 32 Stat. 829), later redesignated "Secretary of Commerce" (Act. of March 4, 1913, Sec. 1, 37 Stat. 736) transferred to the Commandant of the Coast Guard (Reorganization Plan No. 3 of 1946, Secs. 101–104, 60 Stat. 1097–1098), transferred to the Secretary of the Treasury, or to the Secretary of the Navy when the Coast Guard is operating in that Department (Reorganization Plan No. 26 of 1950, 64 Stat. 1280) and delegated by the Secretary of the Treasury to the Commandant of the Coast Guard (Treasury Department Order of July 31, 1950, 15 Fed. Reg. 6521).

The Act of 1895 did nothing more than to provide for rules of navigation, and for delimiting the waters where the inland rules were to be followed, as distinguished from the international rules. It cannot be supposed that Congress intended to invest the Commandant of the Coast Guard with power to decide the

boundaries of the United States or of the coastal States; he was concerned with navigational problems and would presumably be guided by considerations of navigation rather than jurisdiction—as his own statement, *supra,* shows that he has been.

Furthermore, the character of the Coast Guard line as described in 33 C. F. R. 82.95 and 82.103 shows that the Commandant's order describing it constituted the establishment of an artificial line rather than the recognition of a natural one. Except for about 60 nautical miles of its length nearest the Mississippi boundary, the line runs between navigational buoys and one lighthouse, situated distances of from 1½ to 10 nautical miles seaward from the nearest mainland or island, as shown on charts of the Coast and Geodetic Survey.[33] The line itself runs much more than 20 nautical miles from the nearest land at some places. Inland waters in the jurisdictional sense are those that are so landlocked as to be within the exclusive jurisdiction of the littoral nation. However one is to define "landlocked" waters (and we believe that question should be deferred to supplementary proceedings; see *infra,* pp. 158–161), they cannot include, as does the Coast Guard line, a belt of water extending far seaward of the outermost islands and points of land. Even the *Anglo-Norwegian Fisheries Case,* I. C. J. Reports (1951) 116, apparently marking the most extreme extent of base line for the marginal

[33] The Louisiana portion of the Coast Guard line is shown on U. S. C. & G. S. Charts 1267, 1270, 1272–1279. It also appears in somewhat more convenient form on the smaller scale charts 1115 and 1116.

sea ever to be given international recognition, did not go beyond lines drawn between points of dry land, either on the mainland or islands or rocks in the sea.

The Act of February 10, 1807, 2 Stat. 413, cited by Louisiana (Paragraph 3; Answer, 18), is wholly irrelevant. It merely authorized a survey of coastal waters for the purpose of preparing navigational charts.

(*c*) It is equally clear that the Coast Guard line had no operative effect to enlarge Louisiana's boundary. The establishment of such a line, defining the area in which the inland rules of navigation are to be observed, does not work any change in State boundaries. *United States* v. *Newark Meadows Imp. Co.*, 173 Fed. 426, 428 (C. C. S. D. N. Y.) And, as we have already pointed out (*supra*, pp. 131–132), the Commandant of the Coast Guard, in establishing the line, declared that it was not intended to have any such effect.

(*d*) Louisiana Act 33 of 1954, La. Acts, 1954, p. 63, asserting a boundary three leagues seaward from the Coast Guard line, cannot improve the State's position in this respect. For the reasons just discussed, the Coast Guard line is not a proper base line from which to measure the width of the marginal sea. Moreover, the statute came too late to entitle the State to benefits under the Submerged Lands Act. The grant made by that Act is limited to boundaries three miles from the coast, unless a more extended boundary existed when the State entered the Union, or was approved by Congress before May 22, 1953. Sec. 2 (b), 67 Stat.

29, 43 U. S. C. (1952 ed.) Supp. III, 1301 (b). The Coast Guard line was not adopted until December 1, 1953, to be effective January 1, 1954 (18 Fed Reg. 7893); and Louisiana Act 33 of 1954 was not adopted until June 21, 1954, and has never been approved by Congress.

Moreover, Louisiana Act 33 of 1954 cannot be invoked as a mere interpretation of the State's boundary as it existed when the State entered the Union. The Act of April 8, 1812, 2 Stat. 701, admitting Louisiana to the Union, defined the State as "including all islands within three leagues of the coast." First, Louisiana construes that as meaning "including *everything* within three leagues of the coast." Then, it says that this means the State has a three-league marginal belt. Then, it says that this means the State extends three leagues beyond the outer limit of inland waters. And finally, it says that this means the State extends three leagues beyond the Coast Guard line. The net result of this series of substitutions is that "including all islands within three leagues of the coast" is said to mean, "including three leagues of water beyond a line which itself runs, between the Mississippi and the Sabine, seven nautical miles or more seaward of all islands." We submit that "islands within three leagues of the coast" does *not* mean, "16 miles of water beyond the outermost islands."

3. This Court has not recognized any disputed portions of the coast line claimed by Louisiana Act 33 of 1954

Louisiana alleges (Paragraph 7; Answer, 20–21) that "Certain portions of said coast line and certain bearings and markers delineating the same have been specifically recognized by this Court as parts of the coast line of the State of Louisiana," citing *Louisiana* v. *Mississippi*, 202 U. S. 1, and *The Josephine*, 3 Wall. 83. We understand "said coast line" to refer to the Coast Guard line, discussed immediately before.

We find nothing in either of the cited cases to support Louisiana's allegation. In *Louisiana* v. *Mississippi* the Court did mention the Chandeleur Islands (on which the seaward high-water mark forms part of the Coast Guard line; 33 C. F. R. 82.95), but not as forming part of the coast line of Louisiana. On the contrary, the Court expressed the view "that the peninsula of St. Bernard in its entirety belongs to Louisiana; that the Louisiana Marshes at the eastern extremity thereof form part of the coast line of the State; and that the islands within nine miles of that coast are hers * * *." 202 U. S. at 47. The Coast Guard line is about nine miles seaward from the Louisiana Marshes; plainly it does not follow the "coast line" referred to by the Court. This passage from the Court's opinion shows that the three leagues, within which the State was to receive islands, is to be measured from the mainland and not, as the State urges, from the islands themselves or from some line still farther seaward.

D. REPLY TO FOURTH DEFENSE

1. In 1812 the United States did not claim or recognize territorial boundaries extending more than three miles into the sea

Louisiana alleges (Paragraph 1; Answer, 21) that when it entered the Union in 1812, territorial boundaries extending at least three leagues seaward were agreed to by all nations possessing territories in the Western Hemisphere and were acquiesced in by the United States and the other maritime nations of the world. We have already shown (*supra,* pp. 39–81) that the United States has never claimed more than three miles nor acquiesced in greater claims by other nations. We believe the remainder of Louisiana's allegation to be equally unfounded, but consider it so patently irrelevant to the present case that we refrain from discussing it at this time. The question here is, where is Louisiana's boundary, as it was when the State entered the Union or as afterward approved by Congress. We have pointed out (*supra,* pp. 111–127) that when the State entered the Union its boundary was at the shore or, at the most, three miles seaward by implication from the policy of the United States to claim that distance. It can make no difference what boundaries were then claimed by other nations, or even what boundaries were maintained by them; for, as we have shown, for purposes of American jurisprudence other nations possessed only such boundaries as the United States recognized them as possessing, namely, boundaries extending not more than three miles seaward (*supra,* pp. 42–81). It is equally obvious that the allegation is irrelevant to any

claim that Congress has approved a broader boundary for the State since its admission to the Union.

2. The United States has never recognized that States and nations bordering on the Gulf of Mexico own the marginal seas more than three miles from their shores

As part of this defense, Louisiana alleges (Paragraphs 2–3; Answer, 21–22) that the United States has always recognized that the States and nations bordering on the Gulf of Mexico own the marginal seas and subsoil to a distance of at least three leagues, as shown by certain enumerated treaties, acts and resolutions of Congress, and diplomatic correspondence. The materials we have discussed in Point I (*supra*, pp. 22–81) demonstrate that the United States has never recognized ownership of the marginal sea beyond a distance of three miles. We do recognize the right of littoral nations to exploit the resources of the subsoil and seabed to the edge of the continental shelf; but the States of the United States have no such right, except as given to them by Congress in the Submerged Lands Act. *United States* v. *Louisiana*, 339 U. S. 699. The materials cited by Louisiana do not conflict with this position.

(a) TREATY WITH SPAIN, FEBRUARY 22, 1819

The Treaty of February 22, 1819, with Spain, 8 Stat. 252 (Answer, 22) ceded Florida to the United States and described the boundary between the United States and Spanish possessions, from the Gulf of Mexico to the Pacific. It contains no reference to ownership of the bordering seas. Indeed, its implica-

tion is against such ownership, for it describes the western boundary as beginning "on the Gulph of Mexico, *at the mouth* of the river Sabine, in the sea continuing north, along the western bank of that river," and finally "along the said [42d] parallel, to the South Sea." Art. 3, 8 Stat. 254, 256 (emphasis added). There is no indication that the territory of either country extended into the Gulf or the South Sea (*i. e.*, the Pacific). See *supra*, pp. 123–124.

(b) TREATY WITH MEXICO, JANUARY 12, 1828

The Treaty of January 12, 1828, with Mexico, 8 Stat. 372 (Answer, 22), was entered into after Mexico became independent of Spain. It affirmed the same boundary described in the 1819 treaty, *supra*. Art. Second, 8 Stat. 374. It contains nothing additional with respect to the marginal sea.

(c) RESOLUTION OF MARCH 1, 1837

Louisiana cites (Answer, 22) the Resolution of March 1, 1837, referring to it as a "Resolution of Congress recognizing independence of Texas."[34] In fact it was a resolution of the Senate, not of Congress, and it did not recognize the independence of Texas. The recognition of foreign nations is a function of the Executive, not of the Senate. Cf. *National City Bank* v. *Republic of China*, 348 U. S. 356, 358; *United States* v. *Belmont*, 301 U. S. 324, 330. The Senate resolution merely expressed the view that recognition of Texas

[34] The citation given by Louisiana (Answer, 22) is incorrect. The resolution was introduced at 4 Cong. Globe, 24th Cong., 2d Sess., 83, and passed, *ibid.*, 214.

would be proper. It was as follows (4 Cong. Globe, 24th Cong., 2d Sess., 83):

> *Resolved*, That the State of Texas having established and maintained an independent Government, capable of performing those duties, foreign and domestic, which appertain to independent Governments, and it appearing that there is no longer any reasonable prospect of the successful prosecution of the war by Mexico against said State, it is expedient and proper, and in perfect conformity with the laws of nations, and the practice of this Government in like cases, that the independent political existence of said State be acknowledged by the Government of the United States.

There is nothing in the foregoing relating to territorial boundaries in the sea.

It is true that on December 19, 1836, the Republic of Texas had enacted a statute defining its boundary, which included a claim of three leagues in the Gulf of Mexico. 1 Laws Rep. Tex. 133. In 1844, in the course of debates on the unratified treaty for the annexation of Texas, Senator Walker, who had introduced the resolution of March 1, 1837, regarding the recognition of Texas, made the statement that he had read the Texan boundary statute to the Senate during the debates on the 1837 resolution. 13 Cong. Globe, 28th Cong., 1st Sess., App., 548, 549. However, such reading does not affirmatively appear from the reports of the debates on the recognition resolution. See 4 Cong. Globe, 24th Cong., 2d Sess., 83, 94, 108–110, 134, 175, 210, 214. In any event, the concern of Congress

at both times was over disputed upland boundaries, and there is nothing to indicate that any consideration was given to the maritime boundary claim. But even if the Texan boundary was described to the Senate, and even if the Senate resolution had effected the recognition of Texas,[35] that would not have constituted a recognition of Texas' claim to a three-league boundary in the Gulf. Recognition of a nation does not involve recognition of its boundary claims. *Garvin* v. *Diamond Coal & Coke Co.*, 278 Pa. 469, 473, 123 Atl. 468 (1924); see 1 Hackworth, *Digest of International Law* (1940) 377–378. In fact, the Texan boundary as described in its statute took in the major part of New Mexico, including Santa Fe, the capital, which was always under the effective control of Mexico, and which was not recognized by the United States as part of the Republic of Texas. *De Baca* v. *United States*, 36 C. Cls. 407.

(d) JOINT RESOLUTION OF MARCH 1, 1845, FOR THE ANNEXATION OF TEXAS

Louisiana also cites (Answer, 22) the Joint Resolution of March 1, 1845, 5 Stat. 797, as "annexing State of Texas." Actually, that resolution merely provided for such annexation, which was afterward effected by the Joint Resolution of December 29, 1845, 9 Stat. 108. Presumably Louisiana cites the resolution of March 1, 1845, to show approval of the Texan three-

[35] Texas was recognized on March 7, 1837, by appointment of a chargé d'affaires to be sent to that republic. 1 Moore, *Digest of International Law* (1906) 101.

league claim already referred to; but it clearly had no such effect. It gave the consent of Congress

> that the territory properly included within, and rightfully belonging to the Republic of Texas, may be erected into a new State * * * upon the following conditions, and with the following guarantees, to wit: *First*, Said State to be formed, subject to the adjustment by this government of all questions of boundary that may arise with other governments * * *.

That was not a recognition that any particular area was "properly within, and rightfully belonging to the Republic of Texas"; and certainly the question of maritime boundary was one of those which might arise with other governments and which was therefore specifically made subject to adjustment by the Federal Government.

(6) TREATY OF GUADALUPE HIDALGO, FEBRUARY 2, 1848

As another recognition of a three-league boundary in the Gulf of Mexico, Louisiana cites (Answer, 22) the Treaty of Guadalupe Hidalgo between the United States and Mexico, February 2, 1848, 9 Stat. 922, 923. We find nothing on either of the cited pages having any conceivable relationship to the question of maritime boundaries.[36] However, Article V of that treaty, 9 Stat. 926, is often referred to in that connection. It

[36] The provision of Article III, 9 Stat. 923, that American troops in the interior of Mexico should be withdrawn "to points that shall be selected by common agreement, at a distance from the seaports not exceeding thirty leagues," plainly referred to inland assembly points, where troops were to be held pending embarcation.

establishes the boundary between the United States and Mexico, beginning

> The boundary line between the two republics shall commence in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande, otherwise called Rio Bravo del Norte, or opposite the mouth of its deepest branch, if it should have more than one branch emptying directly into the sea; from thence up the middle of that river * * *.

The claim has sometimes been made that by thus extending their mutual boundary to a point three leagues from shore, the United States and Mexico both claimed three-league maritime belts along their entire Gulf coasts. However, the United States has consistently rejected that view and insisted that the provision was merely intended to prevent smuggling, and referred only to the precise site of the international boundary itself. We have already referred to much diplomatic correspondence on this subject (*supra,* pp. 43–56). As we have shown, the Court should accept the position thus taken by the political branches of the Government with respect to the territorial extent of the national boundary (*supra,* pp. 62–81).

(f) GADSDEN TREATY, DECEMBER 30, 1853

Louisiana likewise refers (Answer, 22) to the Gadsden Treaty with Mexico, December 30, 1853, 10 Stat. 1031. Article I of that treaty, 10 Stat. 1032, modified the western portion of the boundary described by the Treaty of Guadalupe Hidalgo, retaining the eastern

portion as before, "Beginning in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande, as provided in the 5th article of the treaty of Guadalupe Hidalgo" etc. So far as concerns a claim of jurisdiction in the Gulf of Mexico, this adds nothing to the Treaty of Guadalupe Hidalgo, discussed above. Since the United States had already informed Great Britain that the provision of of the Treaty of Guadalupe Hidalgo did not import a three-league maritime claim, that construction must be understood to have been intended when the same provision was repeated in the Gadsden Treaty.

(g) ACT OF JUNE 25, 1868, ADMITTING FLORIDA AND OTHER STATES TO REPRESENTATION IN CONGRESS

Louisiana cites (Answer, 22) the "Act of Congress approving the Constitution of the State of Florida, February 25, 1868, 15 Stat. 73." Apparently this is intended to refer to the Act of June 25, 1868, "to admit the States of North Carolina, South Carolina, Louisiana, Georgia, Alabama, and Florida, to Representation in Congress," 15 Stat. 73. Presumably its present relevance is supposed to lie in the fact that Article I of the Florida Constitution of 1868, to which it refers, describes the State boundary as running three leagues from land in the Gulf of Mexico. Fla. Laws, 1868, 193, 195; 25 Fla. Stats. Anno., pp. 411, 413. Without attempting to pass upon Florida's rights under the Submerged Lands Act, Congress did not by its action approve the Florida Constitution except to the limited extent of reciting that it established a republican government. The boundary pro-

vision was not approved of, so far as appears, even noticed, by Congress. The statute, so far as here material, declares:

> Whereas the people of North Carolina, South Carolina, Louisiana, Georgia, Alabama, and Florida have, in pursuance of the provisions of an act entitled "An act for the more efficient government of the rebel States," passed March second, eighteen hundred and sixty-seven, and the acts supplementary thereto, framed constitutions of State government which are republican, and have adopted said constitutions by large majorities of the votes cast at the elections held for the ratification or rejection of the same: Therefore,
>
> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That each of the States of North Carolina, South Carolina, Louisiana, Georgia, Alabama, and Florida, shall be entitled and admitted to representation in Congress as a State of the Union when the legislature of such State shall have duly ratified the amendment to the Constitution of the United States proposed by the Thirty-ninth Congress, and known as article fourteen, upon the following fundamental conditions: That the constitutions of neither of said States shall ever be so amended or changed as to deprive any citizen or class of citizens of the United States of the right to vote in said State, who are entitled to vote by the constitution thereof herein recognized * * *.

It is clear that Congress' concern was to protect the political rights of citizens, and the only operative

effect of the Act was to provide for representation of the named States in Congress.

(h) MEXICAN BOUNDARY CONVENTIONS

Louisiana also cites (Answer, 22–23) three boundary conventions between the United States and Mexico: Convention of July 29, 1882, 22 Stat. 986; Convention of March 1, 1889, 26 Stat. 1512; and Convention of March 20, 1905, 35 Stat. 1863. None of these has anything to do with the width of the marginal sea. The Convention of July 29, 1882, provided for a boundary commission to reestablish displaced boundary monuments between the Pacific Ocean and the Rio Grande. The Convention of March 1, 1889, provided for a boundary commission to decide boundary questions involving changes in the bed of the Colorado River or Rio Grande, where those rivers form the international boundary. The Convention of March 20, 1905, provided for the elimination of bancos, areas in loops of the old river bed cut off by avulsive changes in the river which did not change the boundary under existing agreements.

(i) LETTER FROM ROBERT W. MOORE, ASSISTANT SECRETARY OF STATE, TO JOSEPHUS DANIELS, AMERICAN AMBASSADOR TO MEXICO, MAY 23, 1936

Finally, Louisiana cites (Answer, 23) a letter of May 23, 1936, from Assistant Secretary of State Robert W. Moore to Josephus Daniels, American Ambassador to Mexico, 1 Hackworth, *Digest of International Law* (1940) 640–641. That letter refutes, rather than supports, the State's position. It was

the letter of instruction, pursuant to which was written the letter of June 3, 1936, from De L. Boal, American chargé d'affaires, to Eduardo Hay, Mexican Foreign Secretary, 99 Cong. Rec. 3623, already discussed (*supra*, pp. 54–56). The letter of instruction, so far as printed in Hackworth's *Digest*, was carried forward verbatim, with two trivial changes in wording, in the text of the letter to the Mexican Foreign Secretary. It was part of the correspondence by which the United States vigorously protested against a Mexican decree of August 30, 1935 (Diario Oficial, Aug. 31, 1935) amending Section I of article 4 of the Law of Immovable Properties of the Nation (December 18, 1902) to claim nine rather than three nautical miles of territorial waters. See 99 Cong. Rec. 3623–3625; 1 Hackworth, *Digest of International Law* (1940) 639–642. In that letter, as throughout that correspondence, the United States took the position that three miles is the limit of maritime jurisdiction sanctioned by international law, and that Article V of the Treaty of Guadalupe Hidalgo, providing that the boundary between the United States and Mexico should start three leagues in the Gulf of Mexico, was merely an anti-smuggling provision relating only to the particular point of the international boundary and did not justify any claim to a three-league belt of territorial waters along the coast. We are at a loss to perceive how Louisiana can cite this letter as a recognition of a three-league boundary claim by the United States.

3. It is not material what boundaries in the Gulf of Mexico have been recognized by other nations since 1812

Louisiana alleges (Answer, 23) that since it was admitted into the Union in 1812 the family of nations and the great maritime nations of the world have recognized American treaties and conventions with Mexico and Spain fixing boundaries of the coastal States in the Gulf of Mexico three leagues seaward. Like its cognate assertions, this allegation is both immaterial and unsound.

It is wholly immaterial to this case what view other nations have taken since 1812 regarding boundaries in the Gulf of Mexico. The subject of this suit is the right to exploit mineral resources in the seabed. The State has no such right except to the extent granted by the United States. *United States* v. *Louisiana*, 339 U. S. 699. The grant made by the United States is limited to State boundaries as they existed when the State entered the Union, or as since approved by Congress before May 22, 1953. Thus, congressional approval would be the only circumstance since 1812 on which the State could predicate any rights.

Indeed, the views of other nations at any time, whatever are equally immaterial. As we have explained (*supra*, pp. 39–81), the position taken by the United States is that its boundary is only three miles from the coast; and the question is a political one on which the position taken by this Government must be accepted by the courts of this Nation. It would be anomalous to suggest that the views of other governments are of more weight than the views of this

Government in domestic courts, with regard to such a question.

Since, as we have just shown (*supra*, pp. 139–147), the treaties and conventions referred to by Louisiana did not fix the boundaries of the coastal States three leagues in the Gulf, any supposed acceptance by other nations of the view that they had done so would have been based on a misconception. Certainly other nations, by mistakenly imputing to the United States a three-league claim which it has never made, could not invest it with a jurisdiction which it vigorously disclaims. Nor have they shown any disposition to do so. On the contrary, when Britain, for example, feared that the Treaty of Guadalupe Hidalgo did reflect such a claim, she protested promptly. The United States, of course, immediately replied that, as we have ever since maintained, no such claim was intended. *Supra*, pp. 43–44, 46–47, 54–57.

4. Louisiana's equal footing with other States does not entitle it to boundaries more than three miles from the coast

Louisiana alleges in this defense (Paragraph 5, Answer, 23) that the equal footing to which it is entitled under the Constitution requires that its boundary be recognized as being three leagues in the Gulf because the boundaries of Texas and Florida and other Gulf States are recognized as extending that far. We shall not attempt in this case to argue the rights of either Texas or Florida under the Submerged Lands Act with respect to the continental shelf adjacent to their shores. There is nothing in

the "equal footing" theory which makes the extent of their rights in any way pertinent to Louisiana's claims.

Ordinarily, the claim to stand on an "equal footing" is that a newly admitted State is entitled to stand on an equal footing with the original States, or with other States already admitted to the Union. Louisiana, however, was the first of the Gulf States to be admitted to the Union, April 8, 1812 (2 Stat. 701).[37] Thus Louisiana is in the unusual position of asserting a right to stand on an equal footing with States that came after it. We believe it unnecessary to consider what effect this chronology might have on the underlying question of political boundary; but it clearly forecloses reliance on the "equal footing" theory so far as concerns the rights here involved. As we have several times stressed, the question here is the extent of the rights granted by the Submerged Lands Act, and those rights are limited to the State boundary as it existed when the State entered the Union or as afterward approved by Congress. Certainly when Louisiana entered the Union in 1812 it had no boundary derived from a constitutional right to stand on an equal footing with respect to the particular boundaries to

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[37] Mississippi was admitted December 10, 1817 (3 Stat. 472); Alabama was admitted December 14, 1819 (3 Stat. 608); Texas was admitted December 29, 1845 (9 Stat. 108); Florida was admitted March 3, 1845 (5 Stat. 742), but its claim to a three-league boundary in the Gulf rests on Article I of its Constitution of 1868 (Fla. Laws, 1868, pp. 193, 195; 25 Fla. Stats. Anno., pp. 411, 413) and the Act of June 25, 1868, readmitting it to representation in Congress (15 Stat. 73; *supra*, pp. 145–146).

be claimed by future States in years to come. And there is no claim that Congress has since approved any boundary for Louisiana resulting from the more extended claims of Texas and Florida. Even if such a boundary had been accorded to Louisiana by force of its constitutional equality, for purposes of political jurisdiction, it had not the Congressional approval which is prerequisite to its applicability to the grant of mineral rights made by the Submerged Lands Act.

And there certainly can be no valid claim that Congress is *constitutionally* required to make precisely the same grant of federal resources to each and every state. The whole history of congressional grants of federal property—lands, facilities, monies—belies such an argument. The rule has never been that what Congress gives to one state it must give to all.

E. REPLY TO FIFTH DEFENSE

1. Louisiana has no prescriptive right to the submerged lands and minerals of the outer continental shelf

Louisiana alleges (Paragraphs 1–3; Answer, 24–26) that ever since 1812 it has exercised open, notorious, exclusive and unquestioned possession over the submerged lands and minerals described in the complaint, from which have resulted a general conviction and conclusive presumption that Louisiana has title thereto, and a prescriptive title.[46] In *United States*

[46] The notoriety of Louisiana's occupancy seems only recently to have reached to the office of the Attorney General of the State. In response to a request for some reference to the southern legal boundary of the State, James O'Connor, Assistant Attorney General of Louisiana, on September 21, 1934, merely quoted from the

v. *Louisiana*, 339 U. S. 699, the same contentions were carefully considered and unqualifiedly rejected by this Court, and a decree was entered declaring that the State had no right, title or interest in those lands and minerals. 340 U. S. 899. No further comment seems necessary now.

8. Louisiana has no right to submerged lands and minerals beyond the three-mile limit as a result of any exercise of territorial jurisdiction over that area

In this connection, Louisiana alleges (Paragraphs 1, 2; Answer, 24–25) that ever since 1812 it has exercised continuous and unchallenged sovereignty over the area described in the complaint, and that by reason thereof it is entitled to the submerged lands and minerals therein. To the extent that this is in-

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Act of Congress admitting the State to the Union, and said, "you will note that the southern boundary of the State of Louisiana is given as the Gulf of Mexico." Letter to Mr. L. J. Neuman; *Reports and Opinions of the Attorney General of Louisiana from April 1, 1934, to April 1, 1936*, p. 685. And on December 8, 1937, in response to an inquiry whether certain oyster reefs near Marsh Island were within the jurisdiction of Louisiana, Assistant Attorney General A. P. Miceli, writing to William G. Rankin, State Commissioner of Conservation, reviewed certain international law authorities and federal decisions declaring a three-mile limit to have been adopted by the United States, and said, "we conclude, in consonance with the treaties of the United States with foreign powers, and the jurisprudence of the United States Supreme Court, that the minimum limit of the territorial water domain of our state in the Gulf of Mexico extends at the present time to a distance of three marine miles (60 to a degree of latitude) from the lowest point of low water mark of the coast." A three-league boundary for the State was not mentioned. *Reports and Opinions of the Attorney General of Louisiana from April 1, 1936, to April 1, 1938*, p. 959.

tended to assert a claim independently of the Submerged Lands Act, it is equally answered by the decision in *United States* v. *Louisiana*, 339 U. S. 699. It was there held that all rights in these lands and minerals belonged to the United States exclusively.

If this allegation is intended to state a claim under the Submerged Lands Act, it is insufficient. A boundary created by conduct subsequent to statehood is not a boundary existing when the State entered the Union. Neither is it a boundary subsequently approved by Congress. The fact, of course, is that it is not a boundary at all. The boundary of the United States is three miles from the coast, and no State has power by any means either to extend or to exceed the boundary of the nation. (*Supra*, pp. 39–81.)

F. REPLY TO SIXTH DEFENSE

1. Louisiana has not acquired ownership of submerged lands and minerals of the outer continental shelf through acquiescence of the United States

Louisiana here alleges (Paragraphs 1, 2; Answer, 26–27) that for a long time the United States has recognized and acquiesced in Louisiana's assertion of title to the submerged lands and minerals of the continental shelf, and that the United States is therefore estopped to assert a contrary claim. That allegation does not relate to any claim under the Submerged Lands Act; it asserts an independent right in the State. This Court has already ruled against it. *United States* v. *Louisiana*, 339 U. S. 699.

2. The United States has not shown by acquiescence any belief that the act admitting Louisiana to the Union should be construed in accordance with the State's claims

Louisiana also asserts (Paragraph 3; Answer, 27) that the Government's acts of acquiescence in the State's assertions of ownership "constitute evidence of the intent of Congress in describing Louisiana's boundaries as 'including all islands within three leagues of its coast,' and are interpretive of the Act of Congress admitting Louisiana to the Union to mean that Louisiana has title to the waters, submerged lands and resources lying seaward from its coast".

So far as title is concerned, this allegation is answered by what has been said above. It is *res judicata* that the State received on its admission to the Union no title to the submerged lands and minerals of the Gulf of Mexico. *United States* v. *Louisiana*, 339 U. S. 699.

Apparently this allegation is intended also to support a claim under the Submerged Lands Act, on the theory that by recognizing Louisiana's ownership of the submerged lands and minerals the United States showed how it construed the boundary described in the act admitting the State to the Union. However, it is not alleged that any of the acts of acquiescence related to areas more than three miles from the coast; without that, they could not be germane to the present issue. On the other hand, if it is intended to imply that those acts related to locations throughout the area in dispute, which extends far more than three leagues beyond the outermost land or islands, such

acts would have no tendency to show a construction of the phrase "including all islands within three leagues of the coast" contained in the act admitting the State to the Union (2 Stat. 701). But quite apart from its technical defects, the allegation must be rejected for more fundamental reasons. If, as this Court held in *United States* v. *California*, 332 U. S. 19, 39–40, acts of acquiescence such as are referred to here were incapable of defeating federal ownership, even though the principle of federal ownership of the bed of the marginal sea had never been enunciated prior to that case, then *a fortiori* they must be incapable of defeating the federal policy of limiting the national boundary to three miles—a policy constantly and vigorously announced and maintained by the United States throughout its history (*supra*, pp. 39–62). Louisiana's purpose in referring to federal acquiescence in State assertions of ownership is apparently to support an implication that the boundary of the State is more than three miles from the coast. But, as we have shown, the State boundary cannot exceed the national boundary, and the location of the national boundary is a matter for judicial notice, to be ascertained from official acts and declarations. It should not be made the subject of argumentative evidence. (*Supra*, pp. 62–81.)

G. REPLY TO SEVENTH DEFENSE

1. The United States is not estopped to deny that Louisiana has title to the submerged lands and resources of the Gulf of Mexico

Louisiana alleges (Answer, 27–28) that it has spent money in reliance on both parties' belief that the State owned the submerged lands and resources, and that consequently the United States is now estopped to deny that the State owns them. This allegation has no relation to the Submerged Lands Act, but states an independent claim. That claim was rejected by the holding in *United States* v. *Louisiana,* 339 U. S. 699, that the State had no right, title or interest in or to those submerged lands or resources. It cannot be relitigated now.

In any event, such expenditures cannot estop the Government from asserting its title. In *United States* v. *Texas,* 162 U. S. 1, 89–90, the Court held that the United States' right to Greer County as part of the Indian Territory could not be defeated by the fact that Texas had spent large sums to establish a school system there; and similar claims of estoppel were rejected in *United States* v. *California,* 332 U. S. 19, 40, and *Lee Wilson & Co.* v. *United States,* 245 U. S. 24, 32. In those cases, moreover, the expenditures had been made on the disputed area, and so were lost to the claimant. Here, most of the expenditures alleged—payment of debts, construction of highways, bridges and hospitals, and education—presumably are equally necessary and equally beneficial to the State, whether or not it owns the sub-

merged lands and minerals seaward of the three-mile limit.

H. REPLY TO EIGHTH DEFENSE

1. This Court should now enter a decree defining the area granted to Louisiana by the Submerged Lands Act, leaving to further proceedings the precise identification of the area so defined

Lastly, Louisiana alleges (Answer, 28–30) that a decree should not be entered defining its marginal belt without at the same time specifically identifying its limits; that such a complete determination will involve questions of fact requiring the taking of much evidence; and that such issues can more appropriately and conveniently be heard and determined in a district court. The State moves (Paragraph 4; Answer, 30) that the case be transferred to a district court in Louisiana for that purpose. We submit that the very complexity of the additional issues which Louisiana seeks to present now demonstrates the desirability of deferring them to supplementary proceedings.

As we have shown, the claim of the United States to the submerged lands and resources lying more than three miles from the coast of Louisiana rests upon the legal effect of this Court's decree in *United States* v. *Louisiana*, 340 U. S. 899, the Submerged Lands Act, and the location of the national maritime boundary along the coast of the State. These are all matters of law or subject to judicial notice (*supra*, pp. 22–81). By reference to them, a decree can be entered fixing the width and defining the base line of the belt of submerged lands granted to Louisiana.

Thereafter, if the parties are in disagreement as to the location of any or all of that base line, one or more supplemental decrees may be entered, as necessary, specifically identifying parts or all of it. That is the procedure adopted by the Court in *United States* v. *California,* 332 U. S. 19, where the problem was the same as in the present case, except that there the disputed area began at the low-water mark and outer limit of inland waters instead of three miles seaward therefrom, as here. In that case, the Court rejected California's contention that the issue, framed in such terms, was too vague, saying (332 U. S. at 26):

> * * * there is no reason why, after determining in general who owns the three-mile belt here involved, the Court might not later, if necessary, have more detailed hearings in order to determine with greater definiteness particular segments of the boundary. *Oklahoma* v. *Texas,* 258 U. S. 574, 582. Such practice is commonplace in actions similar to this which are in the nature of equitable proceedings. See *e. g. Oklahoma* v. *Texas,* 256 U. S. 602, 608–609; 260 U. S. 606, 625; 261 U. S. 340. California's contention concerning the indefiniteness of the claim presents no insuperable obstacle to the exercise of the highly important jurisdiction conferred on us by Article III of the Constitution.

On a shelving and tortuous coast such as that of Louisiana, specific identification of the low-water mark and the outer limit of inland waters involves both difficult factual questions of physical observation at every disputed location and legal questions as to

definition of terms and application of such definitions to particular physical situations. Resolution of these problems with respect to the entire Louisiana coast will be, at best, a protracted process. There are many reasons why the clear-cut legal question of the width of the marginal belt should be answered separately and in advance. It can be answered quickly. If it is answered first, then every subsidiary determination of a segment of the base line will automatically determine the State and federal titles seaward therefrom; if, however, all questions are thrown into one consolidated trial, title to none of the submerged land will be settled until final judgment. And until the width of the marginal belt is known, there can be no complete identification of the waters whose status (as inland water or marginal sea) is material to the case. For example, if Louisiana owns all the submerged lands to the 27th parallel, as it claims, it will not be necessary to identify any inland waters at all. Even under the State's most modest claim, of a marginal belt of three leagues, the State will own the beds of all coastal indentations less than six leagues wide, while under the three-mile contention of the United States it will be necessary to decide the inland water status of all indentations more than six miles in width. Obviously, there must be a preliminary determination of the width of the marginal belt before it can be known what the further issues will be. The mere fact that trial of the consolidated issues would, as the State asserts, require the taking of much evidence should suffice to show the undesirability of complicating and delaying decision of the single legal question presented by the

Government's present motion, by consolidating it for trial with the subsidiary factual issues that the State seeks to advance.

CONCLUSION

For the foregoing reasons, it is submitted that this Court should now enter a decree declaring that the United States is entitled, as against the State of Louisiana, to the lands, minerals and other things underlying the Gulf of Mexico, lying more than three geographic miles seaward from the ordinary low-water mark and from the outer limit of inland waters on the coast of Louisiana and extending seaward to the edge of the continental shelf, and that the State of Louisiana has no title thereto or property interest therein; declaring that the United States is entitled to an accounting by the State of Louisiana for all sums of money derived by the State from such lands and minerals after June 5, 1950; and retaining jurisdiction of the case for such further proceedings as may be necessary to effectuate the decree.

Respectfully,

HERBERT BROWNELL, JR.,
Attorney General.

J. LEE RANKIN,
Solicitor General.

OSCAR H. DAVIS,
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GEORGE S. SWARTH,
FRED W. SMITH,
Attorneys.

FEBRUARY 1957.

APPENDIX.

1. Act of February 20, 1811, 2 Stat. 641:

CHAP. XXI.—*An Act to enable the people of the Territory of Orleans to form a constitution and state government, and for the admission of such state into the Union, on an equal footing with the original states, and for other purposes*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the inhabitants of all that part of the territory or country ceded under the name of Louisiana, by the treaty made at Paris on the thirtieth day of April, one thousand eight hundred and three, between the United States and France, contained within the following limits, that is to say: beginning at the mouth of the river Sabine, thence by a line to be drawn along the middle of the said river, including all islands to the thirty-second degree of latitude; thence due north, to the northernmost part of the thirty-third degree of north latitude; thence along the said parallel of latitude to the river Mississippi; thence down the said river to the river Iberville; and from thence along the middle of the said river and lakes Maurepas and Ponchartrain, to the gulf of Mexico; thence bounded by the said gulf to the place of beginning; including all islands within three leagues of the coast, be, and they are hereby authorized to form for themselves a constitution and state government, and to assume such name as they may deem proper, under the provisions and upon the conditions herein after mentioned.

* * * * *

2. Act of April 8, 1812, 2 Stat. 701:

CHAP. L.—*An Act for the admission of the State of Louisiana into the Union, and to extend the laws of the United States to the said state*

Whereas, the representatives of the people of all that part of the territory or country ceded, under the name of "Louisiana," by the treaty made at Paris, on the thirtieth day of April, one thousand eight hundred and three, between the United States and France, contained within the following limits, that is to say: beginning at the mouth of the river Sabine; thence, by a line to be drawn along the middle of said river, including all islands to the thirty-second degree of latitude; thence, due north, to the northernmost part of the thirty-third degree of north latitude; thence, along the said parallel of latitude, to the river Mississippi; thence, down the said river, to the river Iberville; and from thence, along the middle of the said river, and lakes Maurepas and Ponchartrain, to the gulf of Mexico; thence, bounded by the said gulf, to the place of beginning, including all islands within three leagues of the coast; did, on the twenty-second day of January, one thousand eight hundred and twelve, form for themselves a constitution and state government, and give to the said state the name of the State of Louisiana, in pursuance of an act of Congress, entitled "An act to enable the people of the territory of Orleans to form a constitution and state government, and for the admission of the said state into the Union, on an equal footing with the original states, and for other purposes:" And the said constitution having been transmitted to Congress, and by them being hereby approved; therefore

Be it enacted by the Senate and House of Representatives of the United States of Amer-

ica in Congress assembled, That the said state shall be one, and is hereby declared to be one of the United States of America, and admitted into the Union on an equal footing with the original states, in all respects whatever, by the name and title of the state of Louisiana * * *.

* * * * *

3. Submerged Lands Act, Public Law 31, 83d Congress, 1st Sess., approved May 22, 1953, 67 Stat. 29:

AN ACT

To confirm and establish the titles of the States to lands beneath navigable waters within State boundaries and to the natural resources within such lands and waters, to provide for the use and control of said lands and resources, and to confirm the jurisdiction and control of the United States over the natural resources of the seabed of the Continental Shelf seaward of State boundaries.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Submerged Lands Act".

TITLE I

DEFINITION

SEC. 2. [43 U. S. C. (1952 ed.) Supp. III, 1301] When used in this Act—

(a) The term "lands beneath navigable waters" means—

* * * * *

(2) all lands, permanently or periodically covered by tidal waters up to but not above the line of mean high tide and seaward to a line three geographical miles distant from the coast line of each such State and to the boundary line of each such State where in any case such boundary as it existed at the time such State

became a member of the Union, or as heretofore approved by Congress, extends seaward (or into the Gulf of Mexico) beyond three geographical miles * * *;

* * * * *

(b) The term "boundaries" includes the seaward boundaries of a State or its boundaries in the Gulf of Mexico or any of the Great Lakes as they existed at the time such State became a member of the Union, or as heretofore approved by the Congress, or as extended or confirmed pursuant to section 4 hereof but in no event shall the term "boundaries" or the term "lands beneath navigable waters" be interpreted as extending from the coast line more than three geographical miles into the Atlantic Ocean or the Pacific Ocean, or more than three marine leagues into the Gulf of Mexico;

(c) The term "coast line" means the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters;

* * * * *

TITLE II

LANDS BENEATH NAVIGABLE WATERS WITHIN STATE BOUNDARIES

SEC. 3. [43 U. S. C. (1952 ed.) Supp. III, 1311] RIGHTS OF THE STATES.—

(a) It is hereby determined and declared to be in the public interest that (1) title to and ownership of the lands beneath navigable waters within the boundaries of the respective States, and the natural resources within such lands and waters, and (2) the right and power to manage, administer, lease, develop, and use the said lands and natural resources all in accordance with applicable State law be, and they are hereby, subject to the provisions hereof, recognized, confirmed, established, and

vested in and assigned to the respective States or the persons who were on June 5, 1950, entitled thereto under the law of the respective States in which the land is located, and the respective grantees, lessees, or successors in interest thereof;

(b) (1) The United States hereby releases and relinquishes unto said States and persons aforesaid, except as otherwise reserved herein, all right, title, and interest of the United States, if any it has, in and to all said lands, improvements, and natural resources; (2) the United States hereby releases and relinquishes all claims of the United States, if any it has, for money or damages arising out of any operations of said States or persons pursuant to State authority upon or within said lands and navigable waters * * *.

(c) The rights, powers, and titles hereby recognized, confirmed, established, and vested in and assigned to the respective States and their grantees are subject to each lease executed by a State, or its grantee, which was in force and effect on June 5, 1950, in accordance with its terms and provisions and the laws of the State issuing, or whose grantee issued, such lease, and such rights, powers, and titles are further subject to the rights herein now granted to any person holding any such lease to continue to maintain the lease, and to conduct operations thereunder, in accordance with its provisions, for the full term thereof, and any extensions, renewals, or replacements authorized therein, or heretofore authorized by the laws of the State issuing, or whose grantee issued such lease: *Provided, however,* That, if oil or gas was not being produced from such lease on and before December 11, 1950, or if the primary term of such lease has expired since December 11, 1950, then for a term from the effective date hereof equal to the term remaining unexpired on December 11, 1950, under the provisions of such

lease or any extensions, renewals, or replacements authorized therein, or heretofore authorized by the laws of the State issuing, or whose grantee issued, such lease * * *.

* * * * *

SEC. 4 [43 U. S. C. (1952 ed.) Supp. III, 1312] SEAWARD BOUNDARIES.— * * * Any State admitted subsequent to the formation of the Union which has not already done so may extend its seaward boundaries to a line three geographical miles distant from its coast line * * *. Any claim heretofore or hereafter asserted either by constitutional provision, statute, or otherwise, indicating the intent of a State so to extend its boundaries is hereby approved and confirmed, without prejudice to its claim, if any it has, that its boundaries extend beyond that line. Nothing in this section is to be construed as questioning or in any manner prejudicing the existence of any State's seaward boundary beyond three geographical miles if it was so provided by its constitution or laws prior to or at the time such State became a member of the Union, or if it has been heretofore approved by Congress.

* * * * *

SEC. 9. [43 U. S. C. (1952 ed.) Supp. III, 1302] Nothing in this Act shall be deemed to affect in any wise the rights of the United States to the natural resources of that portion of the subsoil and seabed of the Continental Shelf lying seaward and outside of the area of lands beneath navigable waters, as defined in section 2 hereof, all of which natural resources appertain to the United States, and the jurisdiction and control of which by the United States is hereby confirmed.

* * * * *

4. Outer Continental Shelf Lands Act, Public Law 212, 83d Congress, 1st Sess., approved August 7, 1953, 67 Stat. 462:

AN ACT

To provide for the jurisdiction of the United States over the submerged lands of the outer Continental Shelf, and to authorize the Secretary of the Interior to lease such lands for certain purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Outer Continental Shelf Lands Act".

SEC. 2. [43 U. S. C. (1952 ed.) Supp. III, 1331] DEFINITIONS.—When used in this Act—

(a) The term "outer Continental Shelf" means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 2 of the Submerged Lands Act (Public Law 31, Eighty-third Congress, first session), and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control;

* * * * *

SEC. 3. [43 U. S. C. (1952 ed.) Supp. III, 1332] JURISDICTION OVER OUTER CONTINENTAL SHELF.—(a) It is hereby declared to be the policy of the United States that the subsoil and seabed of the outer Continental Shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition as provided in this Act.

(b) This Act shall be construed in such manner that the character as high seas of the waters above the outer Continental Shelf and the right to navigation and fishing therein shall not be affected.

SEC. 4. [43 U. S. C. (1952 ed.) Supp. III, 1333] LAWS APPLICABLE TO OUTER CONTINENTAL SHELF.—(a) (1) The Constitution and laws and civil and political jurisdiction of the United States are hereby extended to the subsoil and seabed of the outer Continental Shelf and to all

artificial islands and fixed structures which may be erected thereon for the purpose of exploring for, developing, removing, and transporting resources therefrom, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State: *Provided, however,* That mineral leases on the outer Continental Shelf shall be maintained or issued only under the provisions of this Act.

(2) To the extent that they are applicable and not inconsistent with this Act or with other Federal laws and regulations of the Secretary [of the Interior] now in effect or hereafter adopted, the civil and criminal laws of each adjacent State as of the effective date of this Act are hereby declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf, and the President shall determine and publish in the Federal Register such projected lines extending seaward and defining each such area. All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. State taxation laws shall not apply to the outer Continental Shelf.

(3) The provisions of this section for adoption of State law as the law of the United States shall never be interpreted as a basis for claiming any interest in or jurisdiction on behalf of any State for any purpose over the seabed and subsoil of the outer Continental Shelf, or the property and natural resources thereof or the revenues therefrom.

* * * * *

SEC. 8. [43 U. S. C. (1952 ed.) Supp. III, 1337] LEASING OF OUTER CONTINENTAL SHELF.—

(a) In order to meet the urgent need for further exploration and development of the oil and gas deposits of the submerged lands of the outer Continental Shelf, the Secretary [of the Interior] is authorized to grant to the highest responsible qualified bidder by competitive bidding under regulations promulgated in advance, oil and gas leases on submerged lands of the outer Continental Shelf which are not covered by leases meeting the requirements of subsection (a) of section 6 of this Act. * * *

* * * * *

5. Louisiana Act 55 of 1938, approved June 30, 1938, Louisiana Acts of 1938, p. 169:

AN ACT

To declare the sovereignty of Louisiana along its seacoast and to fix its present seacoast boundary and ownership

Whereas dominion, with its consequent use, ownership and jurisdiction, over its marginal waters by a State has found support because it is the duty of a State to protect its citizens whose livelihood depends on fishing, or taking from said marginal waters the natural products they are capable of yielding; also, has found support in that sufficient security must exist for the lives and property of the citizens of the State;

Whereas, according to the ancient principles of international law it was generally recognized by the nations of the world that the boundary of each sovereign State along the seacoast was located three marine miles distant in the sea, from low water mark along its coast on the open sea;

Whereas, the seaward boundary of each sovereign State as so fixed is generally known as the three-mile limit of such State;

Whereas, the said three-mile limit was so recognized as the seaward boundary of each

sovereign State, because at the time it became so fixed, three marine miles was the distance of a cannon shot and was considered the distance at which a State could make its authority effective on the sea by the use of artillery located on the shore;

Whereas, since the said three-mile limit was so established as the seaward boundary of each sovereign State, modern cannon have been improved to such an extent that now many cannon shoot twenty-seven marine miles and more and by the use of artillery located on its shore a State can now make its authority effective at least twenty-seven marine miles out to sea from low water mark;

Whereas, by the Act of Congress of February 20th, 1811, by which the State of Louisiana was admitted to the United States as a State, the southern boundary of Louisiana was fixed as follows: "thence bounded by the said gulf to the place of beginning, including all islands within three leagues of the coast;"

Whereas, therefore, the gulfward boundary of Louisiana is already located in the Gulf of Mexico three leagues distant from the shore, a width of marginal area made greater, by the above Act and agreement, than the well-accepted and inherent three-mile limit:

Whereas, a State can define its limits on the sea;

Whereas, the State of Louisiana owns the waters of the sea and the waters of the arms of the sea and the bed of the sea, the bed of the arms of the sea, and the seashore and the shores of all arms of the sea as far inland as the high water mark within the territory of the State of Louisiana; and

Whereas, the State of Louisiana, including all parts thereof and all territory that may be added thereto, forms a part of the United States of America, over which the said United States is authorized to exercise and exercises

such powers and jurisdiction as the said United States is authorized by the Constitution of the United States to exercise thereover;

SECTION 1. Be it enacted by the Legislature of Louisiana, That the gulfward boundary of the State of Louisiana, is hereby fixed and declared to be a line located in the Gulf of Mexico parallel to the three-mile limit as determined according to said ancient principles of international law, which gulfward boundary is located twenty-four marine miles further out in the Gulf of Mexico than the said three-mile limit.

SECTION 2. [La. Rev. Stats. (1950) 49: 2] That, subject to the right of the government of the United States to regulate foreign and interstate commerce under Section 8 of Article 1 of the Constitution of the United States, and to the power of the government of the United States over cases of admiralty and maritime jurisdiction under Section 2 of Article 3 of the Constitution of the United States, the State of Louisiana has full sovereignty over all of the waters of the Gulf of Mexico and of the arms of the Gulf of Mexico within the boundaries of Louisiana, as herein fixed, and over the beds and shores of the Gulf of Mexico and all arms of the said Gulf within the boundaries of Louisiana, as herein fixed.

SECTION 3. [La. Rev. Stats. (1950) 49: 3] That the State of Louisiana owns in full and complete ownership the waters of the Gulf of Mexico and of the arms of the said Gulf and the beds and shores of the Gulf of Mexico and the arms of the Gulf of Mexico, including all lands that are covered by the waters of the said Gulf and its arms either at low tide or high tide, within the boundaries of Louisiana, as herein fixed.

SECTION 4. That this Act shall never be construed as containing a relinquishment by the State of Louisiana of any dominion sovereignty,

territory, property, or rights that the State of Louisiana already had before the passage of this Act.

6. Louisiana Act 33 of 1954, approved June 21, 1954, Louisiana Acts of 1954, p. 63:

AN ACT

To amend and re-enact Section 1 of Title 49 of the Louisiana Revised Statutes of 1950 relative to state water boundaries; gulfward boundary

Whereas, under authority of Section 3 of Article IV of the United States Constitution, the United States Congress admitted Louisiana, as a State into the Union in April, 1812, and fixed its gulfward boundary at 3 leagues from coast.

Whereas, in compliance with Acts of Congress of February 10, 1807, 2 Stat. 413, and of February 19, 1895, 28 Stat. 672, 33 U. S. C. 151, the coast line of the State of Louisiana was officially designated and defined by bearings, light-houses, buoys and coast objects, as shown in Section 1 herein;

Whereas, the United States Supreme Court has held that the waters inside of the coast line designated and defined under said Act of February 19, 1895, are "as much a part of the inland waters of the United States within the meaning of this Act as the harbor within the entrance" and another Federal Court held that said Act "was for the purpose of defining the inland waters of the United States."

Whereas, the United States Congress, by its "Tidelands" Act, approved May 22, 1953, 67 Stat. 32, recognized and confirmed State ownership of the lands beneath navigable waters within the State's boundaries, and the natural resources, including oil, gas, and all other minerals, and fish, shrimp, oysters, and other

marine animal and plant life within such lands and waters; and said Tidelands Act adopted State boundaries in the Gulf of Mexico as they existed at the time such State became a member of the Union not more than 3 marine leagues into the Gulf of Mexico from the coast line, which "coast line" is defined in said Act as that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters; and

Whereas, the State of Louisiana owns these submerged lands and natural resources within such land and waters in trust for its people, and the economic welfare of the State and the public services dependent upon the State revenues to be derived from these valuable natural resources require that the State's historic boundary be redefined to avoid confusion and to clarify the situation with regard thereto.

Be it enacted by the Legislature of Louisiana:

SECTION 1. Section 1 of Title 49 of the Louisiana Revised Statutes of 1950 is hereby amended and reenacted to read as follows:

§ 1. Gulfward boundary. The historic gulfward boundary of the State of Louisiana extends a distance into the Gulf of Mexico 3 marine leagues from coast.

The coast or coast line of the State of Louisiana is accepted and approved as designated and defined in accordance with applicable Acts of Congress, as follows: From Ship Island Lighthouse to Chandeleuer Lighthouse; thence in a curved line following the general trend of the seaward, high-water shore lines of the Chandeleuer Islands to the Southwesternmost extremity of Errol Shoal; thence to Pass-a-Loutre lighted whistle buoy 4 to South Pass lighted whistle buoy 2; thence to Southwest Pass entrance midchannel lighted whistle buoy; thence to Ship Shoal lighthouse; thence to Calcasieu Pass lighted whistle buoy 1; thence to Sabine Pass lighted whistle buoy 1, as designated and

defined under authority of the Act of Congress of February 19, 1895, 28 Stat. 672, 33 U. S. C. 151 as amended, and as is shown on the attached chart showing the coast line of the State marked thus – – – and showing the State gulfward boundary by a solid line 3 marine leagues from coast, which chart shall be paraphed by the Speaker of the House of Representatives, the President of the Senate and by the Governor to be identified herewith.

SECTION 2. That all laws or parts of laws in conflict herewith be and they are hereby repealed with the exception that the designation on the attached plat of the common boundaries of the coastal parishes of the State of Louisiana shall not be taken or interpreted as in any manner changing or affecting the interior or inland boundaries of any said coastal parishes as now existing or fixed by applicable State laws, nor shall said plat be taken or construed, as intending to affect the common maritime boundary between this State and the States of Mississippi and Texas.

SECTION 3. The Governor having certified to the legislature during the session of the legislature the necessity for the immediate passage of this Act, this Act shall become effective upon approval thereof by the Governor.

APPENDIX B

Letter from John Foster Dulles, Secretary of State, to Herbert Brownell, Jr., Attorney General, June 15, 1956:

DEPARTMENT OF STATE
WASHINGTON

JUNE 15, 1956.

DEAR MR. ATTORNEY GENERAL: I refer to your letter of April 26, 1956, concerning proceedings now pending before the Supreme Court of the United States between the Federal Government and the State of Louisiana. You state that the purpose of the suit is to determine the extent of the submerged off shore area which the United States granted to the State by the Submerged Lands Act of May 22, 1953 (67 Stat. 29, 43 U. S. C. (1952) Supp. II, secs. 1301–1315). You point out that this issue involves the location of the maritime boundary of the United States and you request a statement of the position of the United States concerning the extent of its territorial waters, particularly during the early years of its history.

When the Submerged Lands Act was under consideration in Congress, the Department of State testified before the Senate Committee on Interior and Insular Affairs on the foreign relations aspects of the proposed legislation, including the extent of the territorial waters of the United States. The Department testified that the United States had traditionally supported the three-mile limit, that is, a breadth of territorial waters of three nautical miles measured from low water mark on the shore. (See Hearings on S. J. Res. 13 and other bills before the Committee on Interior and Insular

Affairs, United States Senate, 83d Congress, 1st Session, February 16–27, March 2–4, 1953, p. 1051.)

This position is supported by a long line of court decisions, treaties and statements of the Executive going back as far as 1793, when this Government first had to face the question of the breadth of territorial waters. At that time, international practice regarding the breadth of waters over which a coastal State could exercise control was not fully developed. The expression "territorial waters" was not yet in current use. Frequently, the projection of territorial sovereignty into adjacent waters took the form of an assertion of a right to prohibit hostilities between foreign vessels in the waters under the control of the cannons on the shore (neutrality). The United States was perhaps the first nation to translate the concept of the utmost range of a cannon ball into a specific distance fixed at three miles, in a note to the French Government of November 8, 1793, which read in part:

"It is certain that, heretofore, they [governments] have been much divided in opinion as to the distance from their sea coasts, to which they might reasonably claim a right of prohibiting the commitment of hostilities. The greatest distance, to which any respectable assent among nations has been at any time given, has been the extent of the human sight, estimated at upwards of twenty miles, and the smallest distance, I believe, claimed by any nation whatever, is the utmost range of a cannon ball, usually stated at one sea-league. Some intermediate distances have also been insisted on, and that of three sea-leagues has some authority in its favor. The character of our coast, remarkable in considerable parts of it for admitting no vessels of size to pass near the shores, would entitle us, in reason, to as broad a margin of protected navigation, as any nation

whatever. Not proposing, however, at this time, and without a respectful and friendly communication with the Powers interested in this navigation, to fix on the distance to which we may ultimately insist on the right of protection, the President gives instructions to the officers, acting under his authority, to consider those heretofore given them as restrained for the present to the distance of one sea-league, or three geographical miles from the sea shores. This distance can admit of no opposition, as it is recognised by treaties between some of the Powers with whom we are connected in commerce and navigation, and is as little or less than is claimed by any of them on their own coasts." (Mr. Jefferson, Sec. of State, to Mr. Genet, the French Minister, I American State Papers, For. Rel., 183).

The caution which led Jefferson to reserve for further consideration the claims of the United States in this matter continued to mark the position of this Government for a few years after the turn of the century. There are indications that our statesmen kept an open mind on the possibility of extending the limit, although they remained firm in their conviction that three miles was the smallest limit claimed by any nation and hence a limit which could not be questioned by any one. Secretary of State Pickering reaffirmed in 1796 the position of the United States that "our jurisdiction * * * has been fixed * * * to extend three geographical miles * * * from our shores" and Secretary of State Madison stated in 1807 that "there could surely be no pretext for allowing less [to the United States] than a marine league from the shore, that being the narrowest allowance found in any authorities on the law of nations" (I Moore, International Law Digest 702).

But this Government soon resolved any doubts it had in the matter in favor of a firm stand on a three-mile limit and opposition to

claims to broader limits. From the outset, it had adopted freedom of the seas as an axiom of its foreign policy. It rapidly perceived that, in order to give maximum effect to this policy, it must adhere strictly to the three-mile limit. This position was clearly illustrated in a note addressed by Secretary Seward to the Spanish Minister on December 16, 1862. Spain claimed a jurisdictional belt around Cuba of six miles. The Secretary pointed out that the principles bearing on the issue were the principle "that the sea is open to all nations" and the principle that a nation is entitled to exercise its sovereignty in a portion of the sea adjacent to its coasts. He stated that the exercise of this sovereignty abridged the "universal liberty of the seas". And he concluded, after a review of the practice of states regarding the limit to which they were entitled to exercise this sovereignty:

"Impressed by these general views, the United States are not prepared to admit that Spain, without a formal concurrence of other nations, can exercise exclusive sovereignty upon the sea beyond a line of three miles from the coast, so as to deprive them of the rights common to all nations upon the open seas". (I Moore, International Law Digest 706, at 707–708.)

The position of the United States on the three-mile limit has remained unchanged to this day, and at no time has this Government followed a different policy regarding the extent of its territorial waters in the Gulf of Mexico. Freedom of the seas continues to be essential to the national interests of the United States, particularly in matters of commerce, fishing and defense. Free sea lanes and air routes over the seas are essential to the maintenance of the pre-eminence of the United States in commercial shipping and air transport. Free seas are essential to the prosperity of its fishing

industry. And it is its traditional concept of defense that the greater the freedom and the range of its warships and aircraft, the more effectively its security interests are protected. Compromise of the position of the United States on the three-mile limit would necessarily compromise, if not force abandonment, of its opposition to claims of foreign states to greater breadths of territorial waters, and in turn impair the protection of national interests which the policy of freedom of the seas is designed to achieve. It is no exaggeration to say that, in view of the serious attacks which are now being made upon the freedom of the seas in various parts of the world, the maintenance of the traditional three-mile policy is more than ever a matter of vital interest to the United States.

Sincerely yours,

(S) John Foster Dulles,

JOHN FOSTER DULLES.

APPENDIX C

Presidential Proclamation No. 2667, September 28, 1945, 10 Fed. Reg. 12303, 59 Stat. 884:

POLICY OF THE UNITED STATES WITH RESPECT TO THE NATURAL RESOURCES OF THE SUBSOIL AND SEA BED OF THE CONTINENTAL SHELF

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

Whereas the Government of the United States of America, aware of the long range world-wide need for new sources of petroleum and other minerals, holds the view that efforts to discover and make available new supplies of these resources should be encouraged; and

Whereas its competent experts are of the opinion that such resources underlie many parts of the continental shelf off the coasts of the United States of America, and that with modern technological progress their utilization is already practicable or will become so at an early date; and

Whereas recognized jurisdiction over these resources is required in the interest of their conservation and prudent utilization when and as development is undertaken; and

Whereas it is the view of the Government of the United States that the exercise of jurisdiction over the natural resources of the subsoil and sea bed of the continental shelf by the contiguous nation is reasonable and just, since the effectiveness of measures to utilize or conserve these resources would be contingent upon cooperation and protection from the shore, since the continental shelf may be regarded as an extension of the land-mass of the coastal nation and thus naturally appurtenant to it, since these

resources frequently form a seaward extension of a pool or deposit lying within the territory, and since self-protection compels the coastal nation to keep close watch over activities off its shores which are of the nature necessary for utilization of these resources;

Now, therefore, I, Harry S. Truman, President of the United States of America, do hereby proclaim the following policy of the United States of America with respect to the natural resources of the subsoil and sea bed of the continental shelf.

Having concern for the urgency of conserving and prudently utilizing its natural resources, the Government of the United States regards the natural resources of the subsoil and sea bed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control. In cases where the continental shelf extends to the shores of another State, or is shared with an adjacent State, the boundary shall be determined by the United States and the State concerned in accordance with equitable principles. The character as high seas of the waters above the continental shelf and the right to their free and unimpeded navigation are in no way thus affected.

In witness whereof, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

Done at the City of Washington this 28th day of September, in the year of our Lord nineteen hundred and forty-five, and of the Independence of the United States of America the one hundred and seventieth.

[SEAL] HARRY S. TRUMAN.

By the President:

DEAN ACHESON,

Acting Secretary of State.

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UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION TO THE MOTION OF THE PARISHES OF ST. BERNARD, PLAQUEMINES, JEFFERSON, IBERIA AND ST. MARY FOR LEAVE TO FILE INTERVENTION

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On February 27, 1957, the Parishes of St. Bernard, Plaquemines, Jefferson, Iberia and St. Mary, five of the nine coastal parishes of Louisiana,[1] filed their joint motion for leave to intervene as defendants, together with their supporting brief and proposed answer. The brief asserts that the applicants are entitled to intervene as of right, under Rule 24 (a) (2) and (3), F. R. C. P., as made applicable by Rule 9 (2) of this Court. Brief in Support of Motion, 4, 8. We submit that the applicants have no such right, and that the motion should be denied.

Louisiana parishes are political subdivisions of the State like counties in other States. *National Liberty*

---

[1] The coastal parishes not joining in the motion are Lafourche, Terrebonne, Vermillion and Cameron.

Ins. Co. of America v. *Police Jury*, 96 F. 2d 261, 262 (C. A. 5). Their status has been clearly described by the Supreme Court of Louisiana in *State* v. *City of Baton Rouge*, 215 La. 315, 330–331, 40 So. 2d 477:

> It is the settled jurisprudence that counties and municipalities are creatures of the State, established for the purpose of providing effective government with functions, powers, duties and obligations delegated or imposed by the State and that there is nothing in the Fourteenth Amendment of the Federal Constitution or any other provision of the Constitution of the United States which would prohibit the State from making any change of such functions, powers and obligations. In this field, *the State of Louisiana is supreme and may do as it wills, unrestrained by the Federal Constitution.*
>
> In the case of *Laramie County Com'rs* v. *Albany County*, 92 U. S. 307, 23 L. Ed. 552, the United States Supreme Court held:
>
> "Political subdivisions of the kind are always subject to the general laws of the State; * * *.
>
> "Such corporations are the mere creatures of the legislative will; and, inasmuch as all their powers are derived from that source, it follows that those powers may be enlarged, modified or diminished at any time, without their consent, or even without notice. They are but subdivisions of the State, deriving even their existence from the Legislature. * * *"
> [Emphasis by the court.]

This Court has recently considered whether such a political subdivision of a State should be allowed to

intervene in an original suit to which the State is a party. *New Jersey* v. *New York*, 345 U. S. 369. That was a suit by New Jersey against the State of New York and the city of New York, to enjoin diversion of water from the Delaware river. Pennsylvania was allowed to intervene, and the city of Philadelphia sought to do likewise, on the ground that it had an interest in the waters of the river and was responsible for its own water supply under its home rule charter. The Court denied permission for Philadelphia to intervene, saying (345 U. S. at 372–373):

> The "*parens patriae*" doctrine * * * is a recognition of the principle that the state, when a party to a suit involving a matter of sovereign interest, "must be deemed to represent all its citizens." *Kentucky* v. *Indiana*, 281 U. S. 163, 173–174 (1930). The principle is a necessary recognition of sovereign dignity, as well as a working rule for good judicial administration. Otherwise, a state might be judicially impeached on matters of policy by its own subjects, and there would be no practical limitation on the number of citizens, as such, who would be entitled to be made parties.
>
> * * * If we undertook to evaluate all the separate interests within Pennsylvania, we could, in effect, be drawn into an intramural dispute over the distribution of water within the Commonwealth. * * *
>
> Our original jurisdiction should not be thus expanded to the dimensions of ordinary class actions. An intervenor whose state is already a party should have the burden of showing some compelling interest in his own right,

> apart from his interest in a class with all other citizens and creatures of the state, which interest is not properly represented by the state. * * *

Those principles should dispose of the present motion. The coastal parishes have not and could not have any independent interest in the submerged lands. They merely participate in the exercise of the State's rights therein, to such extent as the State may from time to time permit. The applicants' assertion that their interest may be inadequately represented rests not on any divergence between their interest and the State's, but solely on their dissatisfaction with the State's manner of defending its own interest. The conduct of this case should not be encumbered by permitting various State agencies[2] to intervene merely because they hold divergent views as to the extent of the State's rights or the manner in which they should be presented. The State's right is single, through whatever agencies it may be administered; it should be defended by the State alone.

---

[2] If the present applicants were allowed to intervene, it would seem that the four remaining coastal parishes should have the same privilege, jointly or severally, if they wish it; and at least as strong a case for intervention could be made out by the State's numerous mineral lessees. Their claims, although derived from the State, have become independently vested and could conceivably involve interests at variance with the State's, as the parishes' claims cannot. Precisely this sort of situation was envisioned by the Court in *New Jersey* v. *New York*, 345 U. S. 369, 373, as a highly undesirable consequence of permitting such intervention as is now sought.

CONCLUSION

The motion for leave to intervene should be denied.

Respectfully submitted,

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UNITED STATES OF AMERICA, PLAINTIFF
V.
STATE OF LOUISIANA, DEFENDANT

MEMORANDUM FOR INTERVENERS IN ANSWER TO OPPOSITION MEMORANDUM BY THE UNITED STATES

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NO. 11 ORIGINAL

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

UNITED STATES OF AMERICA, PLAINTIFF

V.

STATE OF LOUISIANA, DEFENDANT

MEMORANDUM FOR INTERVENERS IN ANSWER TO OPPOSITION MEMORANDUM BY THE UNITED STATES

An opposition memorandum was filed by the United States against the right of the coastal parishes of St. Bernard, Plaquemines, Jefferson, Iberia and St. Mary to intervene in this action.

The first objection urged is that applicants are subdivisions of the defendant State and subject to the authority of the State Legislature.

The second objection is that when the State is a party to a suit involving a matter of sovereignty interest, it must be deemed to represent all its citizens and creatures, and an intervener has the burden of showing some compelling interest in his own right apart from his interest in a class with all other creatures of the State.

The simple answer to the first objection is that there is no issue here as to the validity or authority of any State law with respect to the property or rights of the intervening parishes.

To the contrary, interveners alleged that as subdivisions of the State, they have the legal privilege of appearing in Court for the protection of their rights, (Meyer v. Plaquemines Parish, 1943, 11 So. 2d 291; Police Jury of La Salle Parish v. Police Jury of Catahoula Parish, 1919, 145 La. 1053, 83 So. 250). Further, the State is without authority to litigate for a political subdivision which possesses the right to sue and be sued. (State v. Drouet, 1943, 203 La. 743, 14 So. 2d 622; State v. Tensas Delta Land Co., Ltd., 1910, 126 La. 59, 52 So. 216, 221).

Under the State Constitution, applicants have the lawful right of local government and taxation within their respective jurisdictions and boundaries, which are coextensive with the State's historic legal gulf-

ward boundary, and they have a legal right to maintain their territorial integrity therefor; they have a 10% oil royalty interest, or property right, in the submerged lands within their said boundaries, and they are entitled to a portion of the funds collected by the United States and deposited in the Treasury to the extent of their said 10% royalty interest; they have issued millions of dollars of bonds expressly secured by said 10% oil royalty interest, with the faith and credit of their respective parishes pledged to the payment thereof.

They are entitled to $200,000 annually from severance taxes collected on oil, gas and other minerals produced within their parishes, including said submerged lands. (See p. 8 Brief in support of Motion, and Second Defense pp. 24-25).

Applicants cited the applicable provisions of the State Constitution and laws in support of all of the above. (See footnotes 9, 10, 13, 16, 17, pp. 7-9 of Brief in Support of Motion).

Certainly opponent cannot seriously contend that all of the above legal and property rights do not constitute "some compelling interest in his (their) own right apart from his (their) interest in a class with all other creatures of the State" to make inapplicable the lone case cited, New Jersey v. New York.

The settled jurisprudence of this Court supports applicants' right to intervene in this action.

In Oklahoma v. Texas, 42 S. Ct. 406, 409, this Court held,

> "It long has been settled that claims to property or funds which a court has taken possession and control through a receiver or like officer may be dealt with as ancillary to the suit wherein the possession is taken and the control exercised—and this although independent suits to enforce the claims could not be entertained in that Court."

In that case, there were conflicting claims of two States and the United States to a river bed, (involving a matter of sovereignty interest), which called for adjudication. There were many persons who had placer mining locations and mineral interests intervening to assert rights to particular tracts and to claim proceeds from oil taken therefrom, which funds were under the Court's control.

The Court held no other court could lawfully interfere with or disturb that possession or control.

The same happened in this action, when this Court ordered other litigation dismissed, and all further leasing or operations discontinued in the disputed area pending the further order of this court.

The funds collected by the United States and deposited in the Treasury, in which applicants have an

interest, are likewise subject to control and disposition of this Court (See p 8, footnote 14, Brief in Support of Motion).

In Texas v. Florida, 59 S. Ct. 563, 567, this Court held:

> "The present suit is between States, and the other jurisdictional requirements being satisfied, the individual parties whose presence is necessary or proper for the determination of the case or controversy between the States are properly made parties defendant."

These decisions amply support applicants' right of intervention in this action under FRCP Rule 24 (a) (2) and new Rule 9 (2) of this Court.

The inadequacy of representation of applicants' interests by defendant, and the fact that applicants will be bound by the judgment or orders rendered in this action are fully set out in applicants' Motion for leave to file Intervention and Brief in support of Motion, pp. 1-6.

The opposition to the motion for leave to file intervention should be dismissed, and applicants' motion for leave to file intervention herein should be granted.

Applicants further request that an order be rendered granting them 20 minutes time on April 8, 1957, when this matter is fixed for hearing, to present their

arguments and the law supporting their claims and defenses set forth in their Intervention and Answer.

Respectfully submitted,

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March, 1957.

PROOF OF SERVICE

I certify that copies of the foregoing were served on the Attorney General and Solicitor General of the United States and the Attorney General of the State of Louisiana by air mail special delivery.

L. H. PEREZ, Of Counsel,
A Member of the Bar of this Court

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UNITED STATES OF AMERICA, PLAINTIFF
V.
STATE OF LOUISIANA

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No. 11 ORIGINAL

In the Supreme Court of the United States

OCTOBER TERM, 1956

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA

Brief of the State of Louisiana in Opposition to Motion for Judgment by the United States

STATEMENT OF THE CASE

The United States alleges that it is entitled to exclusive possession of, and full dominion and power over the lands, minerals and other things underlying the Gulf of Mexico, lying more than three geographical miles seaward from the ordinary low-water mark and from the outer limit of inland waters on the coast of Louisiana, extending seaward to the edge of the continental shelf, and is entitled to an accounting for all sums of money derived by the State of Louisiana from the said area since June 5, 1950. (Complaint Par. VI).

It is further alleged that in the case of *United States vs. Louisiana*, 340 U.S. 899, this Court entered its decree enjoining the State of Louisiana from taking or removing mineral products from this area and di-

rected the state to account to the United States for all sums derived therefrom after June 5, 1950. (Complaint Par. III).

In answer to the Complaint, Louisiana denies generally every allegation made by the plaintiff and avers that the United States has never had any title to or possession of the submerged lands in the Continental Shelf of the Gulf of Mexico, and has never had possession thereof except to hold the same in trust, as a part of the Louisiana territory, for the State of Louisiana to be thereafter formed and admitted to the union as required by the Treaty of Paris of April 30, 1803, (8 Statute 200).

Defendant further states that the only dominion and control possessed by the plaintiff over the waters and submerged lands of the Gulf of Mexico relate to the regulation and control of the use of the same for purposes of interstate and foreign commerce, navigation, and the national defense. (Ans. Par. II).

Louisiana admits that a decree was entered in the case of the *United States vs. Louisiana*, 340 U.S. 899, which decree speaks for itself, but shows that the theory upon which said decree was based has been modified and superseded by the provisions of the Submerged Lands Act of May 22, 1953 (43 U. S. C. 1301) and by the Outer Continental Shelf Lands Act of August 7, 1953 (43 U. S. C. 1331).

Defendant avers that the Submerged Lands Act recognizes and acknowledges the coastal states to be the sovereign owners of all lands beneath navi-

gable waters within their boundaries, including the marginal seas and submerged lands therein, and confirms their titles thereto; that the legislative history of this act shows that throughout the history of this nation the states have been recognized to be the sovereign owners of such lands and waters. (Ans. Par. IV).

The state also alleges that the Outer Continental Shelf Lands Act extended the boundary of the United States to the edge of the continental shelf, and that the Constitution of the United States, as construed by numerous decisions of this court, declares that the boundaries of the separate sovereign states are co-extensive with and co-terminous with the boundaries of the United States, and that any provision in the Submerged Lands Act which might limit the boundaries of the state at a line short of the national boundary, and any provision of the Outer Continental Shelf Lands Act which may grant to the federal government exclusive possession, or proprietary rights in the lands and resources of the continental shelf are unconstitutional and of no effect. In this connection the state avers that in so far as the said acts permit the Federal Government to exercise property rights in said area they are violative of the Treaty of Cession entered into by the United States with France on April 30, 1803, which said Treaty under Article 6 of the Constitution is the Supreme Law of the land, and vests rights in the State of Louisiana which the Federal Government can not divest without violating the 5th

Amendment to the Constitution; that said acts if so construed, would violate Article IV Sections 3 and 4, of the United States Constitution to the extent that they would permit the Federal Government to invade property and property rights guaranteed to the State of Louisiana and would unlawfully change the boundaries of the state without its consent; and that said acts in so far as they recognize property rights in the United States or restrict the boundaries of the state, exceed the powers granted to the Federal Government by the constitution, and would therefore conflict with the 9th Amendment thereto, and with the 10th Amendment which reserves to the states all powers and rights not specially granted to the United States. (Ans. Par. IV).

Louisiana therefore claims that its boundaries are co-extensive with the boundaries of the United States and extend to the edge of the continental shelf, and that within such area the Federal Government can only exercise powers granted to it by the constitution or necessarily implied in the powers expressly granted.

In the alternative, the state claims that its seaward boundaries extend at least three marine leagues into the Gulf of Mexico; that the United States has at all times prior to the aforesaid acts of Congress passed in 1953 recognized the fact that states bordering on the Gulf of Mexico own the marginal seas and subsoil thereof to a distance of at least three leagues, and

has never heretofore asserted that state ownership consists of anything less.

Further in the alternative, Louisiana shows that the Submerged Lands Act recognizes the boundaries of any and all States bordering the Gulf of Mexico to be three leagues from coast if it was so provided by the Constitution or laws of any such State at the time, or prior to the time such State became a member of the Union; that Louisiana's boundary was fixed at three leagues from coast in its Constitution and in the Act of Congress admitting the State to the Union; and that any other interpretation of Louisiana's Constitution and Act of Admission would result in discrimination against this State as to the extent of its sovereignty, and would violate the "equal footing" clause in the Act of Admission, since other Gulf Coast States such as Texas and Florida have boundaries recognized as extending three leagues from coast into the Gulf of Mexico.

Further answering Louisiana says that it has effectively occupied the continental shelf over such a long period of time that a conclusive presumption of sovereignty, title and ownership results therefrom. (Ans. Page 24-28). In support of these allegations of effective occupancy and possession Louisiana has filed a motion to take the depositions of 14 witnesses and to file documentary evidence of which this Court will not take judicial notice.

The United States has opposed Louisiana's Motion to take depositions and has filed a Motion for

Judgment which brings before the court the merits of the claims of both parties as reflected by the pleadings and by facts of which this court will take judicial notice.

Although not an issue in the case, and solely for the convenience of the Court, Louisiana makes the following additional statement, relating to the agreement between the United States and the State of Louisiana:

On June 11, 1956, following proceedings initiated in the State courts by the State of Louisiana to enjoin officials of the United States and prospective bidders from further leasing and operations in the disputed tidelands area, this Court entered an order which provided, in part, (351 U.S. 978):

> "that the State of Louisiana and the United States of America are enjoined from leasing or beginning the drilling of new wells in the disputed tidelands area pending further order of this court unless by agreement of the parties filed here."

On October 12, 1956, an agreement between the United States and the State of Louisiana, effective on the same date, was filed in these proceedings pursuant to that order. Without prejudice to the respective rights, claims and demands of the parties, the agreement defines the disputed tidelands area within which further drilling was consented to, subject to the execution by lessees of agreements with the State and

the United States on stipulated forms. Further agreement is made for the impoundment of all bonuses, royalties and rentals received from leases in the disputed area and for such funds to be held in escrow pending the termination of this litigation. Each of the parties upon receipt of the impounded funds and subject to compliance by the lessees with the requisite agreements, agrees to validate and give recognition to leases affecting an area with respect to which it is the ultimately successful party.

QUESTIONS PRESENTED

1. Does the United States have the right to dispossess the State of Louisiana from submerged lands and resources on the Continental Shelf in the Gulf of Mexico which have been effectively possessed and occupied by the State over a long period of time, with the acquiescence of the federal government, and without protest from any foreign nation?

2. Do the boundaries of the United States extend to the full limit of the Continental Shelf in the Gulf of Mexico, and if so, is it not true that the boundaries of the State of Louisiana are coextensive with the national boundaries in the said Gulf?

3. To the extent that the Submerged Lands Act (43 U. S. C. 1301) or the Outer Continental Shelf Lands Act (43 U. S. C. 1331) may restrict or limit the boundaries of Louisiana in the Gulf of Mexico, are these Acts constitutional in view of Article IV, Sections 3 and 4 of the Constitution and the 5th, 9th and 10th Amendments thereto?

4. In the alternative, if the Court should find that the State boundaries do not extend to the full limit of the Continental Shelf, then is it not a fact that by reason of the Treaty of Cession, the Act of Admission, and the Submerged Lands Act itself, the state boundaries are three leagues seaward of the Louisiana Coast?

5. Since Louisiana has had physical possession and has exercised exclusive jurisdiction over the Continental Shelf from time immemorial, and such pos-

session and jurisdiction are a basis of title in international law, does not the State have the right to produce oral and documentary evidence as to the nature and extent of such jurisdiction and possession, either as a basis for its claim of ownership to the entire Continental Shelf, or, in the alternative, as evidence to interpret the description of Louisiana's boundaries in the Act of Admission of the State to the Union in 1812?

SUMMARY OF ARGUMENT

1. When this Court decided the cases of *United States v. California*, 332 U.S. 19, *United States v. Louisiana*, 339 U.S. 699 and *United States v. Texas*, 339 U.S. 707, it did not have the benefit of a political determination by Congress as to extent of the National and State boundaries in the sea, and as to the ownership of submerged lands and resources therein. Congress has, after these decisions were rendered, stated the national policy on this subject in the Submerged Lands Act (43 U.S.C. 1301) and the Outer Continental Shelf Lands Act (43 U.S.C. 1331), and has approved and adopted, as a rule of property law, the jurisprudence of this Court that the States have always owned the soil under navigable waters, whether inland or not.

2. The theory and effect of the courts' decisions in the three cases above mentioned have been changed and modified to such an extent that a reconsideration of the entire subject as to the relative rights of the State and the federal government in the submerged lands and resources of the Continental Shelf is appropriate and necessary at this time.

3. The Submerged Lands Act did not grant or transfer to the coastal States any title to or ownership of the submerged lands and resources, but recognized and confirmed a title which these States already possessed.

4. The Submerged Lands Act refers to State's historic boundaries. Louisiana's historic boundaries

extend to the 27th parallel of latitude which includes the entire Continental Shelf in the Gulf of Mexico. This was the southern limit of the Louisiana Territory ceded by France to the United States on April 30, 1803, and by virtue of the Treaty of Cession the United States obligated itself to hold this territory in trust for future States to be formed out of this territory.

5. When Congress admitted the State of Louisiana into the Union by Act of April 8, 1812, the United States reserved no part of the submerged lands in the Gulf of Mexico, and such lands passed to the State as an attribute of sovereignty, and in accordance with the obligations assumed by the United States in the Treaty of Cession with France in 1803.

6. The boundaries of the States of the Union and of the United States are coextensive under the American system of dual sovereignty. Since the Outer Continental Shelf Lands Act has declared the national boundary to extend to the edge of the Continental Shelf, Louisiana's boundary in the Gulf of Mexico is coterminous with that of the United States. Within this boundary the United States has no lawful claim of proprietorship and can exercise no powers, and claim no rights except those expressly conferred on it by the Constitution, or necessarily implied in the powers so conferred.

7. Louisiana's claim to the sea-bed, sub-soil and natural resources of the Continental Shelf is in ac-

cord with accepted principles of international law which recognize that exclusive and long continued possession of such submerged lands is a legal and valid basis of title thereto.

The United States can claim no right in international law to exercise federal jurisdiction over the Continental Shelf in the Gulf of Mexico except through, and by virtue of the effective occupation thereof by the State of Louisiana over a long period of time. Such occupation and possession gives to the coastal State ownership and territorial rights in said lands and resources, and justifies an extension of the boundaries of the State and the Nation to include the sub-soil, sea-bed, and natural resources of the Continental Shelf.

8. The United States has not acquired any title to the sea-bed, sub-soil and natural resources of the Continental Shelf by any method enumerated or implied in the Constitution and has no lawful right to dispossess the State of such submerged lands and resources which the State has possessed from time immemorial. To the extent that either the Submerged Lands Act or the Outer Continental Shelf Lands Act permit the federal government to exercise proprietary rights in said area they are violative of Treaty obligations made in Louisiana's behalf in the Treaty of Paris in 1803, which rights of the State are protected by the Fifth and Sixth Amendments to the Constitution. To the extent that said Acts of Congress may limit Louisiana's boundary in the Gulf of Mexico to three miles or

three leagues said Act violates the fifth, sixth, ninth and tenth amendments of the Constitution, and are also in conflict with Article IV section 4 of the Constitution.

9. In the alternative, and only if the Court should deny Louisiana's title and claims set forth above, then Louisiana shows that Act 33 of 1954 of the Legisiature of Louisiana correctly designates the States coast line which has been fixed by the Department of Commerce in accordance with Acts of Congress, and which designates and defines "the line dividing the high seas from rivers, harbors and inland waters." (33 U.S.C. 151) Louisiana's boundary extends three leagues seaward from that line under the terms of its Act of Admission in 1812 which fixed the State's boundary in the Gulf of Mexico three leagues from coast.

10. The United States has consistently approved State ownership of a three-league belt in the Gulf of Mexico and has never asserted that the marginal belt in the Gulf was less than three leagues. Since the provisions of the Submerged Lands Act, and other Acts of Congress long prior thereto, recognize the boundaries of Texas and of Florida as extending three leagues into the said Gulf, any contrary interpretation of the Act of Admission of Louisiana would deprive this State of the benefits of the "equal footing" clause of the Constitution.

11. At the time when Louisiana was admitted to the Union in 1812, and long prior thereto, the United

States had always contended that its marginal belt and territorial waters extended at least three leagues off-shore, and it was not the intention of Congress in the Act of Admission to limit Louisiana to a smaller area. The United States has never asserted or assented to a marginal belt less than three leagues distance off-shore in the Gulf of Mexico.

12. Louisana since her admission to the Union has at all times, and with the acquiescence of the United States, exercised governmental and proprietary rights in the Continental Shelf. Such possession gives to the State a title by prescription and gives rise to a conclusive presumption of title to the Continental Shelf. In the alternative these facts of possession and exercise of jurisdiction afford evidence of a contemporary interpretation by the State and the nation that the boundaries of Louisiana described in its Act of Admission extended three leagues from coast in the Gulf of Mexico.

ARGUMENT

A. THE COASTAL STATES HAVE TITLE TO THE CONTINENTAL SHELF SUBJECT TO CONSTITUTIONAL POWERS OF THE UNITED STATES. THE PARAMOUNT RIGHTS OF THE LATTER CONFER ON IT NO TITLE OR OWNERSHIP.

1. Plaintiffs Position Is Based On Jurisprudence Which No Longer Applies to the Issues Involved in This Action.

The claim advanced by the Attorney General on behalf of the United States to all that portion of the Continental Shelf lying more than three miles seaward from the shores of Louisiana in the Gulf of Mexico is based upon the three decisions of this Court in the California, Louisiana and Texas Tidelands cases[1] and, paradoxically enough, on two acts of Congress that were passed after these three decisions were rendered, namely; the Submerged Lands Act of May 22, 1953 and the Outer Continental Shelf Lands Act of

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[1]United States v. California, 332 U.S. 19, 67 S.Ct. 1658, 91 L.Ed. 1889;

United States v. Louisiana, 339 U.S. 699, 70 S.Ct. 914, 94 L.Ed. 1216;

United States v. Texas, 339 U.S. 707, 70 S.Ct. 918, 94 L.Ed. 1221.

August 7, 1953[2], which acts made a political determination and established a rule of property law which modifies the theory and changes the effect of those decisions.[3]

It appears to be the Attorney General's position that the State of Louisiana has never had the ownership of the submerged lands along its shores in the Gulf of Mexico, and these lands never belonged to the states. This Court did not hold that the lands "belong" to the United States but held only that the United States had "paramount rights". The Court then allowed "imperium" to confer the benefits of "dominion" but did not hold these concepts to be equivalents. This makes all the more incongruous the statement of the Attorney General in Paragraph IV of the Compliant that the United States *granted* the title to and ownership of these submerged lands on May 22, 1953 when Congress enacted the Submerged Lands Act, for if the United States lacked title, it had nothing to grant.

We distinguish between the Attorney General and the United States because it will be found that in the declaration of the territorial extent of the United States, the word of Congress must be accepted, and that word is greatly at variance with the present contentions of the present Attorney General.

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[2]67 Stat. 29, 43 U.S.C. 1301,
67 Stat. 462, 43 U.S.C. 1331.
[3]Superior Oil Co. v. Fontenot, 213 F.2d 565, 569,
Cert. Den. 348 U.S. 837, 99 L.Ed. 660.

2. Political Determination of National Boundary Made By Acts of Congress in 1953 Modify Effect of Recent Decisions of This Court.

When the United States and the State of California contested the right to take oil from submerged lands off the California coast, this Court did not undertake to pass upon the matter of title. The Court was then without the benefit of a declaration by Congress as to the extent of American territorial jurisdiction. As that is a political and not a juridical question, the Court did not then seek to supply the answer to it but chose rather to consider that a claim to the area might present problems international in character, and that in such an area the powers of the federal government were paramount and exclusive.

The decision in the California case was followed without deviation in theory or result in the Louisiana and Texas cases.

Since these three decisions were rendered Congress has declared the extent of American territorial jurisdiction. No longer are we concerned with the international arena or of the comparison of power or rights of the United States with those of an individual state in such an arena. The issue is now purely one of title.

The Attorney General of the United States recognizes that. He treats this as an action to fix boundary. Such an action between proprietors presupposes

separate but adjoining ownerships. The action suggests that Louisiana owns a certain distance into the Gulf of Mexico, three miles or three leagues or some other distance, and measured from the coast line or from the shore line—but that beyond that measure lies federal territory out to the edge of the continental shelf.

Louisiana's position is plain;

1. The seaward boundaries of our state are coextensive with the seaward boundaries of the nation. There is not any federally owned belt of submerged land seaward of the state owned submerged land. While the Congress alone can declare the extent of American territory, and has done so, the "ownership" of that territory as distinguished from "imperium" respecting it, necessarily is vested in the States pursuant to our constitutional system.

2. Alternatively, and only if the Court should hold that Congress can legally appropriate for the federal government a belt of land seaward of the submerged land belonging to and occupied by the States, Louisiana claims that its historic boundaries within the meaning of Congressional Acts extend seaward three leagues and not just three miles from its coast.

3. If a state limit is set short of the limit of national territory, the measurement determining the state limit necessarily commences from the coastline (not the shore line) and the coastline has been de-

clared by Congress to be where inland waters meet the open sea.

The claim of the Attorney General on behalf of the United States is based on the odd position that Louisiana has never had the ownership of the submerged lands along its shores in the Gulf of Mexico. His position is utterly untenable. He cannot rely upon the three previous cases because they did not involve title as the present case does. He cannot rely upon the Submerged Lands Act because it specifically recognizes and confirms the title of Louisiana to the submerged lands extending at least three miles seaward from its *coastline*. And he cannot validly say that such was an initial grant by Congress for two specific reasons:

(a) Congress itself called its action one of restitution and not of grant, and

(b) Even more important, Congress recognized the right of the State to three leagues, not three miles, if the State could show that its historic boundaries extended so far, a present recognition of a previously existing title.

We are not the first to note the great change in the problem resulting from the enactment of the Submerged Lands Act, and when the Congress asserted in the Outer Continental Shelf Lands Act that the submerged lands to the edge of the outer continental shelf appertained to the United States, so far as Louisiana, the Attorney General and this Court are con-

cerned, those lands necessarily became American territory subject to the same rules of public and private ownership which are applicable to the rivers, lakes, bays, inland seas which are within and around our part of the continent and subject to the same rules which are applicable to the land itself. The Fifth Circuit Court recognized this in *The Superior Oil Company v. Fontenot*, 213 F. 2d 565, Cert. Den. 348 U.S. 837, 99 L.Ed. 660.

Moreover, when Alabama attacked the Submerged Lands Act, this Court rejected the attack in recognition of the power of Congress to declare the extent of American territorial jurisdiction and, to confirm to Louisiana its title to the submerged lands[4].

We are not unaware of what at first blush may seem to some to be an inconsistency in Louisiana's position. For we firmly assert that the Submerged Lands Act and the Outer Continental Shelf Lands Act firmly and finally settle favorably to Louisiana that all of the area under consideration in this case is American territory, while we object to the maximum limits set for Louisiana in those very acts. We urge, however, that the two concepts are different.

1. That Congress may, consistent with constitutional limitations, declare the territorial limits of the United States without question from State or Court is acknowledged.

2. That Congress can carve out this area a

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[4]347 U.S. 272, 74 S.Ct. 481, 98 L.Ed. 698.

federally owned belt from which the states are excluded, is denied.

This second point has not been dealt with in any of the tideland cases thus far. But this Court is not without precedents of its own, all favorable to Louisiana, on this point.

Everyone must concede that when in ratifying our Constitution the states surrendered to the federal government the right to raise and support armies and navies and to make war and peace, the states left the family of nations and the union became a member thereof. But this did not involve the surrender of *ownership* of a square inch of land, whether or not covered by water, to which the original thirteen states had claim, and, as will be shown, other states entering the Union were accorded equal rights to those of the original states.

3. The Submerged Lands Act Nullified the Theory of National Dominion Over a Marginal Belt of Submerged Lands.

When the three "Tidelands Cases" were decided by this Court in 1947 and 1950 Congress had made no declaration of national policy or determination as to the ownership of submerged lands lying seaward of the coastal States. However Congress did make such a determination in the Submerged Lands Act, and such a determination must, of necessity, replace any contrary ruling of the Courts since Article IV

Sec. 2, Cl. 2 of the Constitution gives to Congress the power to "make all needful Rules and Regulations respecting the Territory or other property belonging to the United States"—but without prejudice to any claims of any particular state. The theory of the Tidelands Cases that "paramount rights" of the United States in the marginal belt can be translated into federal ownership conflicts with the subsequent Acts of Congress. Therefore the latter must control the decision of the case at bar.

This Court in *U. S. v. Louisiana*, 339 U. S. 699, 704, 94 L.Ed. 1216, 1219, stated the theory on which the California and Texas cases on the same subject, were decided, as follows:

> ". . . The marginal sea is a national, not a state concern. National interests, national responsibilities, national concerns are involved. The problems of commerce, national defense, relations with other powers, war and peace focus there. National rights must therefore be paramount in that area.
>
> That is the rationale of United States vs. California . . . "

The foregoing decision in the Louisiana case became the basis of a suit to recover State severance taxes exacted by Louisiana for the period between June 5, 1950—the date of the decision—and May 22, 1953—the date of the Submerged Lands Act (Public Law No. 31). In upholding the right of the State to collect these taxes the Fifth Circuit Court of Appeals in the Case of *The Superior Oil Co. v. Fontenot*, 213 F. 2d 565, 569, said:

"So here, when the long and heated struggle

over the title and right to possession of the land, which had been waged between the government and the state, came to an end in Public Law 31, the state and appellants, as its lessees, found themselves in one of two positions equally favorable in law. By virtue of the act which nullified the theory on which the opinion and decree of the Supreme Court had been based, they must be held, notwithstanding the opinion of the Supreme Court to have always and at all times had the title and right of possession, or, if the passage of Public Law 31, which brought the long struggle to an end, is to be regarded as then conferring title on them, this title, by the very terms of the Act declaring and establishing it, related back so as to confirm and maintain the possession and title of State and lessee as good from the beginning."

In the foregoing case plaintiff and Appellant filed a petition for writs of certiorari in the Supreme Court of the United States but the Court denied the writs in a memorandum decision reported in 348 U.S. 837, 99 L. Ed. 660. It may therefore be inferred that the Supreme Court did not disagree with the foregoing statement made by Judge Hutcheson that the Submerged Lands Act nullified the theory on which the California case and other tidelands cases were decided.

This Court in *Helvering v. Griffiths*, 318 U.S. 371, 400, 401, 87 L.Ed. 843, 862 makes the following comment regarding its duties to re-examine its previous judgments when Congress has enacted legislation conflicting therewith:

". . . There is no reason to doubt that this Court may fall into error as may other branches of the Government. Nothing in the history or at-

titude of this Court should give rise to legislative embarrassment if in the performance of its duty a legislative body feels impelled to enact laws which may require the Court to re-examine its previous judgments or doctrine."

The statement of Judge Hutcheson in The Superior Oil Company case is supported by the language of the Submerged Lands Act, and by the Legislative history of that Act. Section 3 of the Act provides (43 U.S.C. 1311):

"(a) It is determined and declared to be in the public interest that (1) title to and ownership of the lands beneath navigable waters within the boundaries of the respective states, and the natural resources within such lands and waters **** be, and they are, subject to the provisions hereof, recognized, confirmed, established, and vested in and assigned to the respective States or the persons who were on June 5, 1950, entitled thereto under the law of the respective grantees, lessees, or successors in interest thereof;

(b) (1) The United States releases and relinquishes unto said States and persons aforesaid, except as otherwise reserved herein, all right, title and interest of the United States, *if any it has*, in and to all said lands, improvements, and natural resources; ****" (Emphasis supplied)

The legislative history of the Submerged Lands Act appears in House Report No. 215 and Senate Report No. 133 of the 83rd Congress, 1st Session, excerpts from same appearing at length in Defendant's Appendix A. We wish to emphasize this legislative history because Congress in adopting the Submerged Lands Act has restated a rule of property law long

established by the jurisprudence of this Court.

House Report No. 215 makes the following statement on page 34 regarding the unchallenged ownership of the States of the Union during the 160 years of the Nation's history:

"One Hundred And Sixty Years of Unchallenged Ownership by the States.

Throughout our Nation's history the States have been in possession of and exercising all the rights and attributes of ownership in the lands and resources beneath the navigable waters within their boundaries. During a period of more than 150 years of American jurisprudence the Supreme Court, in the words of Mr. Justice Black, had 'used language strong enough to indicate that the Court then believed that the States also owned territorial jurisdiction, whether inland or not.'

That same belief was expressed in scores of Supreme Court opinions and in hundreds of lower Federal courts' and State courts' opinions. Similar beliefs were expressed in rulings by Attorneys General of the United States, the Department of the Interior, the War Department, and the Navy Department. Lawyers, legal publicists, and those holding under State authority accepted this principle as the well-settled law of the land. * * * "

The House Report after discussing the decision in the *California case* then makes the following statement on page 46:

"The repeated assertions by our highest Court for a period of more than a century of the doctrine of State ownership of all navigable waters, whether inland or not, and the universal

belief that such was the settled law, have for all practical purposes established a principle which the committee believes should as a matter of policy be recognized and confirmed by Congress as a rule of property law."

With respect to the claim that the enactment of the Submerged Lands Act would constitute a gift of property belonging to the United States to the coastal states, the Congressional Committee says: (page 47)

"* * * The committee cannot agree that the relinquishment by the Federal Government of something it never believed it had, and the confirmation of rights in the States which they always believed they did have and which they have always exercised, can be properly classified as a 'gift,' but rather a mere confirmation of titles asserted under what was long believed and accepted to be the law. * * *"

Senate Report No. 133 makes similar statements which need not be repeated here. See Defendant's Appendix A for an enlargement of this committee report. However, attention may be directed to the following criticism by the Senate Committee of the Court's holding in the *California Case* that the obligation of the United States to defend the marginal seas from foreign attack gives it paramount rights other than ownership over the submerged lands adjoining our shores. Answering this statement the Senate Committee said: (Page 58-59)

"If the Court in making the statement had reference to the military power of a foreign nation to dispute the rights of the States to take oil under submerged lands within their boundaries, then the same statement could correctly be made about oil

under uplands, providing of course, the foreign nation possessed a military force strong enough to compel a settlement by the United States. *However if the statement was made because the Congress had never legislatively asserted on behalf of the United States or the State's title to the submerged lands within their boundaries, then we think that is all the more reason why the Congress should now remove all doubt about the title by ratifying and confirming the titles long asserted by the various States, subject always, of course, to the paramount powers of the Federal Government under the Constitution, which titles have never been disputed by any foreign nation. (emphasis supplied)* * * * *

* * * It is beyond doubt that the Federal Government cannot assert any lawful control over lands or resources that are not located within the borders of the several States or the Territories, or which has not been committed to it by treaty or other international negotiations."

In *Massachusetts v. Manchester*, 139 U. S. 240, the Supreme Court said:

"'There is no belt of land under the sea adjacent to the coast which is the property of the United States and not the property of the States."

The foregoing statement is an endorsement by the Congress of Mr. Justice Reed's dissent in the California case, wherein he said: (332 US 42-3)

"This ownership in California would not interfere in any way with the needs or rights of the United States in war or peace. The power of the United States is plenary over these undersea lands

precisely as it is over every river, farm, mine, and factory of the nation. While no square ruling of this Court has determined the ownership of those marginal lands, to me the tone of the decisions dealing with similar problems indicates that, without discussion, state ownership has been assumed. Pollard v. Hagan, 3 How (US) 212, 11 L.Ed. 565, supra; Louisiana v. Mississippi, 202 US 1, 52, 50 L.Ed. 913, 931, 26 S. Ct. 408, 571; The Abby Dodge, 223 US 166, 56 L.Ed. 390, 32 S. Ct. 310; New Jersey v. Delaware, 291 US 361, 78 L.Ed. 847, 54 S. Ct. 407; 295 US 694, 79 L.Ed. 1659, 55 S. Ct. 907."

It also constitutes approval of Mr. Justice Frankfurter's answer to the question of title (332 U.S. 43):

"* * * Of course the United States has 'paramount rights' in the sea belt of California—the rights that are implied by the power to regulate interstate and foreign commerce, the power of condemnation, the treaty-making power, the war power. We have not now before us the validity of the exercise of any of these paramount rights. Rights of ownership are here asserted—and rights of ownership are something else. Ownership implies acquisition in the various ways in which land is acquired—by conquest, by discovery and claim, by cession, by prescription, by purchase, by condemnation. When and how did the United States acquire this land?

To declare that the Government has 'national dominion' is merely a way of saying that vis-a-vis all other nations the Government is the sovereign.

If that is what the Court's decree means, it needs no pronouncement by this Court to confer or declare such sovereignty. If it means more than that, it implies that the Government has some proprietary interest. That has not been remotely established except by sliding from absence of ownership by California to ownership by the United States."

The following statements of Senate Joint Resolution No. 13, which became the Submerged Lands Act, regarding the purpose of the bill and the effect of its enactment are quoted. The purpose of the bill is thus stated on page 5 of the Senate Report:

"Purpose of Bill

Senate Joint Resolution 13, as amended, determines and declares that it is in the public interest that title and ownership of lands beneath navigable waters within the boundaries of the respective States, and of the resources therein, be established and vested in the respective States. Insofar as the Federal Government has any proprietary rights in such lands and waters, that interest is relinquished or 'quitclaimed' to the individual States. * * * "

The conclusion of the Senate Committee is stated on page 24:

"IX Conclusion

The committee submits that the enactment of Senate Joint Resolution 13, as amended, is an act of simple justice to each of the 48 states in that it re-establishes in them as a matter of law that

possession and control of the lands beneath navigable waters inside their boundaries which have existed in fact since the beginning of our Nation. It is not a gift; it is a restitution. By this joint resolution the Federal Government is itself doing the equity it expects of its citizens.

The committee recommends enactment of Senate Joint Resolution 13."

The actions of Congress outlined above very strongly suggest that the Court should reaffirm "as a rule of property law" its repeated assertions "for a period of more than a century of the doctrine of State ownership of all navigable waters, whether inland or not." It should, by the same token, renounce the theory that national responsibility or national interest in the submerged lands and territorial waters adjoining our nation's shores gives to the federal government any title to or ownership of such lands and waters. The conclusion to be reached from the Submerged Lands Act and its legislative history is that external national sovereignty pertains only to matters of national defense, interstate and foreign commerce, and other international relationships. It would therefore follow that the jurisprudence of 160 years establishing these principles should be applied to the case at bar. In the light of this jurisprudence Congress has correctly declared that submerged lands belong to and are a part of the individual coastal state which they adjoin. As will be hereinafter shown the Submerged Lands Act, and the Outer Continental Shelf Lands Act, insofar as they recognize exclusive national ownership of the

Outer Continental Shelf, and insofar as they would limit the States' boundaries to three miles or three leagues, are unconstitutional and should be considered as not written.

4. The States Have Always Owned Territorial Waters And Submerged Lands Adjoining Their Shores.

Prior to the Revolutionary War the King of England held the title and dominion over the thirteen American Colonies and the seas adjoining their shores. The Supreme Court has repeatedly held that these colonies succeeded to all of the rights of the Crown when they gained their independence and thereby became the owners of such lands and waters subject only to the rights surrendered to the National Government by the Constitution of the United States. States subsequently admitted to the Union came in on the same footing. This Court has never held that the federal government ever succeeded to the rights of the Crown or that it ever acquired ownership of territorial waters and submerged lands from the English King, or by cession from the individual States, or even from the Constitution of the United States.

The source of the title of the coastal states of the Union is set out in detail in quite a number of early cases which are reviewed in *Shively v. Bowlby*, 152 U. S. 1, 14-15, 26-27, 38 L.Ed. 331, 336-7, 341. The following excerpts from that opinion are pertinent:

> "The English possessions in America were claimed by subjects of the King of England, and

covered by subjects of the King of England, and taken possession of in his name, by his authority or with his assent, they were held by the King as the representative of and in trust for the nation; and all vacant lands, and the exclusive power to grant them, were vested in him. * * And upon the American Revolution all the rights of the Crown and of Parliament vested in the several states, subject to the rights surrendered to the national government by the Constitution of the United States. Johnson v. McIntosh, 21 US 8 Wheat, 543, 595 (5:681, 694); Martin v. Waddell, 41 US 16 Pet. 367, 408-410, 414 (10:997, 1012-14); Com. v. Roxbury, 9 Gray, 451, 478-481; Stevens v. Paterson & N. R. Co., 34 N. J. 532, 3 Am. Rep. 269; People v. New York & S. I. Ferry Co. 68 N. Y. 71. * *"

The Court then goes on to say (152 U. S. 26-27):

"The new states admitted into the Union since the adoption of the Constitution have the same rights as the original states in the tide waters, and in the lands below the high water mark, within their respective jurisdictions. * *

In Pollard v. Hagan (1844) this Court upon full consideration adjudged that upon the admission of the State of Alabama into the Union the title in the lands below high water mark of navigable waters passed to the state, and could not afterwards be granted away by the Congress of the United States. Mr. Justice McKinley, delivering the opinion of the court (Mr. Justice Catron dissenting) said: 'We think a proper examination of this subject will show that the United States

never held any municipal sovereignty, jurisdiction, or right of soil, in and to the territory of which Alabama or any of the new states were formed; except for temporary purposes, and to execute the trusts created by the acts of the Virginia and Georgia legislatures, and the deeds of cession executed by them to the United States, *and the trust created by the treaty with the French Republic of the 30th of April*, 1803, *ceding Louisiana*.'

"When the United States accepted the cession of the territory, they took upon themselves the trust to hold the municipal eminent domain for the new states, and to invest them with it to the same extent, in all respects, that it was held by the states ceding the territories.' 44 U. S., 3 How. 221-3, (11:579-1)." (Emphasis supplied)

The earlier case of *Harcourt v. Gaillard*, (1827) 12 Wheat. 524, 6 L.Ed. 716 refutes the idea that the United States when the Union was formed became possessed of any property whatever except through one of the original states. The Court in that case said:

> "There was no territory within the United States that was claimed in any other right than that of some one of the confederate states; therefore, there could be no acquisition of territory made by the United States distinct from, or independent of some one of the states.[5]

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[5]See also: Report No. 133, 83rd Cong. 1st Sess. 1953 p. 58-9 Commonwealth v. Manchester, 152 Mass. 230, 25 N.E. 116, aff'd Manchester v. Mass. 139 U.S. 240, 35 L.Ed. 159 Brown v. Grant, 116 U.S. 207, 212, 29 L.Ed. 598.

We are, then, referred to the belligerent rights of South Carolina and Georgia; and it is immaterial to the question here, to which of those states the territory appertained. Each declared itself sovereign and independent, according to the limits of its 31st parallel of north latitude.

This limit was claimed and asserted by both of those states in the declaration of independence, and the right to it was established by the most solemn of all international acts—the treaty of peace. It has never been admitted by the United States, that they acquired anything by way of cession from Great Britain by that treaty."

Not only did the federal government acquire nothing in the way of property from the English Crown, but the Constitution gave it no right to acquire any territory to be held and governed permanently as such. The Supreme Court has accordingly said that the national government cannot enlarge its territorial limits bordering the United States in any way except by the admission of new states. Thus in *Dred Scott v. Sanford*, 19 How. 393, 446-8, 15 L.Ed. 691, 718:

" * * * There is certainly no power given by the Constitution to the Federal Government to establish or maintain colonies bordering on the United States or at a distance, to be ruled and governed at its own pleasure; nor to enlarge its territorial limits in any way, except by the admission of new states. * * * No power is given to

acquire a territory to be held and governed permanently in that character. * * *

We do not mean, however, to question the power of Congress in this respect. The power to expand the territory of the United States by the admission of new States is plainly given; and in the construction of this power by all the departments of the government, it has been held to authorize the acquisition of territory, not fit for admission at the time, but to be admitted as soon as its population and situation would entitle it to admission. It is acquired to become a State, and not to be held as a colony and governed by Congress with absolute authority; and as the propriety of admitting a new State is committed to the sound discretion of Congress, the power to acquire territory for that purpose, to be held by the United States until it is in a suitable condition to become a state upon an equal footing with the other States, must rest upon the same discretion. * * *

* * * The principle upon which our governments rest, and upon which alone they continue to exist, is the union of States, sovereign, and independent within their own limits in their international and domestic concerns, and bound together as one people by a general government, possessing certain enumerated and restricted powers, delegated to it by the people of the several States, and exercising supreme authority within the scope of the powers granted to it, throughout the dominion of the United States. A power, therefore, in the general government to obtain and hold colonies and dependent territories, over which

they might legislate without restriction, would be inconsistent with its own existence in its present form. Whatever it acquires, it acquires for the benefit of the people of the several States who created it. It is their trustee acting for them, and charged with the duty of promoting the interests of the whole people of the Union in the exercise of the powers specifically granted. * * *"

The principles of law set forth in these cases are in accord with the dissenting opinions in the California, Texas and Louisiana cases. Since Congress has supplied the lack of a declaration of territory, and thus made the issue only one of property or title, and not a question of power, these dissenting opinions are now authoritative precedents along with the earlier cases which are cited and quoted herein. *Pollard v. Hagan*, 3 How. (US) 212; *Weber v. Harbor Commissioners*, 18 Wall. (US) 57; *Shively v. Bowlby*, 152 U. S. 1; *Manchester v. Massachusetts*, 139 U. S. 240, and other cases cited in this brief, enunciate principles which apply equally to rivers, bays, tidelands and coastal submerged lands under the sea, and correctly state the law of the land at this time.

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[4]See Senate Report 133, 83rd Cong. 1st Sess. 1953, p. 58-9

B. LOUISIANA HAS TITLE TO THE CONTINENTAL SHELF

1. The President's Proclamation Effectively Supports Louisiana's Claim

Louisiana's claim to the entire Continental Shelf is supported by the Continental Shelf Proclamation No. 2667 issued by President Truman on September 28, 1945, (10 FR 12303) in which he asserted the jurisdiction of the United States over the natural resources of the Continental Shelf under the high seas and contiguous to the coasts of the United States and its territories. In this Proclamation the President stated that "the Continental Shelf may be regarded as an extension of the land-mass of the coastal nation and thus naturally appurtenant to it." He further stated that the effectiveness of measures to utilize or conserve the minerals and other natural resources on and under the Continental Shelf would be contingent upon cooperation and protection from the shore" and that "since these resources frequently form a seaward extension of a pool or deposit lying within the territory" of the nation "self protection compels the coastal nation to keep close watch over activities off its shores which are of the nature necessary for utilization of these resources." This Proclamation also states that "the Government of the United States regards the natural resources of the subsoil and sea-bed of the Continental Shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the

United States, subject to its jurisdiction and control."

The entirety of the Proclamation appears in Defendants Appendix A.

This Proclamation of the President was given legislative sanction by the Congress in 1953 by passage of the Outer Continental Shelf Lands Act. This Act is valid and legal insofar as it declares the location of the National Boundaries to be the edge of the Continental Shelf, and confers jurisdiction on the federal government within its constitutional powers governing national defense, interstate and foreign commerce, and navigation. These latter provisions are separate from and independent of the provisions of the act which unconstitutionally seek to establish a federally owned belt of land. Section 17 of the Act makes all of its provisions severable.

2. The Boundaries of the States Are Coextensive With Those of the United States.

Since this Court has always held that the boundaries of the States are co-extensive with those of the United States, that the United States does not and cannot hold property as a monarch may for private or personal purposes, and that territories acquired by the United States are held in trust for the States to be formed out of such territories, it would follow that an extension of the boundaries of the United States into the sea would carry with it an extension of the boundaries of the adjoining State. Therefore, the Presidential Proclamation which declared that the subsoil

of the Gulf of Mexico was a mere extension of the land-mass of the coastal state, and the acts of Congress to the same purpose, would have the effect of declaring that the boundaries of the State of Louisiana extended to the limit of the Continental Shelf.

In *Commonwealth v. Manchester*, 152 Mass. 230, 241, 25 N.E. 112, 116, 9 L.R.A. 236, affirmed 139 U. S. 240, 35 L. Ed. 159, Mr. Justice Holmes stated the opinion of the Supreme Judicial Court of Massachusetts:

> "There is no belt of land under the sea adjacent to the Coast which is the property of the United States and not the property of the States."

In Senate Report No. 133, page 59, the Congressional Committee states:

> "It is beyond doubt that the Federal Government cannot assert any lawful control over lands and resources that are not located within the borders of the several states or the Territories, or which has not been committed to it by treaty or other international negotiations."

The Court pointedly stated that the United States cannot maintain at its pleasure territory bordering that of the several states in *Dred Scott v. Sanford*, 19 How. 393, 446, 15 L.Ed. 691, 718:

> "There is certainly no power given to the Federal Government to establish or maintain colonies bordering on the United States—to be governed or ruled at its pleasure."[7].

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[7]See Also:
Harcourt v. Gaillard, 12 Wheat 523, 6 L.Ed. 716
Brown v. Grant, 116 U.S. 207, 29 L.Ed. 598
Commonwealth v. Manchester, 152 Mass. 230, 25 N.E. 113, 116, affirmed 139 U.S. 240, 35 L.Ed. 159.

Plaintiff's counsel states that the boundary of Louisiana extends no further than the national boundary, but says the latter extends only three miles from the coast of Louisiana.[8] If this be true then the United States proposes to exploit lands, and take all minerals and natural resources from lands to which it has no title or right of possession or control. But the right to use and claim the fruits of ownership implies, of necessity, some sort of title, and when applied to realty such right or title is limited to boundaries which are particularly described.

The Outer Continental Shelf Lands Act particularly describes the Outer Continental Shelf and in Section 3 declares that the subsoil and seabed of the Outer Continental Shelf "appertain to the United States and are subject to its jurisdiction, control, and the power of disposition" (43 U.S.C. 1332).

Section 4 of the Act declares that "the Constitution and laws and civil and political jurisdiction of the United States are extended to the subsoil and seabed of the Outer Continental Shelf". This same section gives to United States District Courts original jurisdiction over this area, and provides that the Longshoremen's and Harbor Workers Compensation Act and the National Labor Relations Act shall be effective in this territory. The head of the Department in which the Coast Guard is operating is granted authority to make regulations for the promotion of safety of life and property and the Secretary of the Army is granted the power to prevent obstruction to navigation. The

[8]Statement with Respect to Motion for Judgment p. 3-4. Memorandum for the United States in Opposition to Motion by the State of Louisiana to Take Depositions p. 2.

Secretary of Interior is granted authority to execute mineral leases under the Act.

The powers of jurisdiction, control and disposition referred to above could hardly be exercised in territory which was not included within the boundaries of the United States. It would be pertinent to ask whether or not the United States would permit a Lessee from the Republic of Mexico or from one of the South American Republics to enter this area and develop it for mineral purposes, and on what basis the United States would claim its exclusive right to the natural resources of the Continental Shelf? Unless the Federal Government can assert that this territory belongs to the coastal State and is a part of the United States it would have no basis to resist the trespass of a foreign lessee. This Court has always held that jurisdiction, territory and ownership are co-extensive.[9]

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[9]New York v. Connecticut, 4 Dall. 4, note (b), (1799), 1 L.Ed. 715

United States v. Bevans, 3 Wheat 336, 385, 388 (1818), 4 L.Ed. 404, 416

Rhode Island v. Massachusetts, 12 Pet. 657, 733 (1838), 9 L.Ed. 1233, 1264

Martin v. Waddell, 16 Pet. 367, 411-12 (1842), 10 L.Ed. 997, 1013

Pollard's Lessee v. Hagan, 3 How. 212, 228 (1845), 11 L.Ed. 565

Smith v. Maryland, 18 How. 71, 74 (1855), 15 L.Ed. 269, 271

McCready v. Virginia, 94 U.S. 391, 394 (1876), 24 L. Ed. 248

Manchester v. Massachusetts, 139 U.S. 240, 261, 263-4, 35 L.Ed. 159

There is no legal and factual basis for Government Counsel's assertion that the boundaries of the United States extend only three miles offshore into the Gulf of Mexico, nor is there any basis for his assertion that the boundaries of Louisiana are limited to that extent.

3. Louisiana's Effective Occupation and Long Possession of the Continental Shelf Is a Basis of Its Title

The basis of any claim in International law to possession and control of the Continental Shelf rests on effective occupation with the acquiescence of the family of nations, and such possession and occupation ripens with the passage of time into a *title of ownership.* The sea-bed, sub-soil and resources then become a part of the territory of the coastal State.

Westlake in his work on International Law, Part 1, Page 190-191 states:

> "The case of the pearl fishery is peculiar, the pearls being obtained from the sea-bottom by divers, so that it has a physical connection with the stable element of the locality which is wanting to the pursuit of fish swimming in the water. When carried on under state protection, as that off the British Island of Ceylon, or that in the Persian Gulf which is protected by British ships in pursuance of treaties with certain chiefs of the Arabian mainland, it may be regarded as an occupation of the bed of the sea. In that character the pearl fishery will be territorial even though the shallowness of the water may allow

it to be practised beyond the limit which the state in question generally fixes for the littoral sea . . . and the territorial nature of the industry will carry with it, as being necessary for its protection, the territorial character of the sea at the spot".

To the same effect are:

Sir Cecil Hurst, "*Whose is the Bed of the Sea?*", *British Year Book of International Law*, 1923-1924.

Mouton, "*The Continental Shelf*," p. 306-7.

Colombos, "*International Law of the Sea*," 3rd Ed. p. 306-7.

Vattel's "*Law of Nations*" (Chitty Ed) p. 127.

Hackworth's "*Digest of International Law*," Vol. II, p. 674-679.

A clear statement of International law on this subject is contained in *Hackworth's Digest of International Law*, Vol. II, page 674-675, as follows:

". . . Wherever it can be shown that particular oyster beds, pearl banks, chank fisheries, sponge fisheries or whatever may be the particular form of sedentary fishery in question outside the three-mile limit have always been kept in occupation by the Sovereign of the adjacent land, ownership of the soil of the bed of the sea where the fishery was situated may be presumed, and th exclusive right to the produce to be obtained from these fisheries may be based on their being a produce of the soil. Ownership of the soil by the Sovereign of the country under such circum-

stances must carry with it the right to legislate for the soil so owned and for the protection of the wealth to be derived from it, and no doubt need be felt as to the binding force of the various enactments which have been issued for the protection of these sedentary fisheries outside the three-mile limit. . . .

The maintenance of a State's property rights in special areas outside the three-mile limit when more extensive general claims to sovereignty, jurisdiction and property were abandoned is in no way inconsistent with the principles laid down by Oppenheim, that the sub-soil beneath the bed of the open sea outside the marginal belt of territorial waters is a no man's land, property in which can be acquired on the part of the littoral State through occupation starting from the sub-soil beneath the bed of the territorial maritime belt. Tunnelling in the sub-soil for purposes of mining or communications seems to be the only aspect of the problem which Oppenheim had in mind, but the principles he lays down are in no way inconsistent with the recognition of a right of exclusive ownership arising from long and undisputed occupation of sedentary fisheries lying on the surface of the bed of the sea."

Quotations from the works of the aforementioned and other authors are set forth in greater detail in Defendants Appendix B.

Louisiana's long possession of the sub-soil and sea-bed in the Gulf of Mexico far beyond three-miles offshore is a basis of Louisiana title, and this effective occupation of the sea-bed by the State is the only

basis in international law whereby the United States may exercise its Federal jurisdiction over this area. The United States can only claim its rights through the State of Louisiana, and the property on which Federal jurisdiction is claimed is property which it acquired from France to be held in trust for the State. The claim of the State ownership, and the assertion of Federal jurisdiction by the United States are in effect a claim to territory, and the boundaries of the State and the nation must of necessity include such territory.

Territories acquired by the United States by treaty or cession must be held in trust by it for the States to be thereafter formed out of such territories, particularly where there is an express obligation to that effect. Among the decisions of the Court on this subject is the case of *Weber v. Harbor Commissioners*, (1873) 18 Wall. (85 U.S.) 57, 65, 21 L.Ed. 798, 802:

> "* * * Although the title to the soil under the tide waters of the bay was acquired by the United States by cession from Mexico, equally with the title to the upland, they held it only in trust for the future state. Upon the admission of California into the Union upon equal footing with the original states, absolute property in and dominion and sovereignty over all soils under the tide-waters within her limits passed to the state, with the consequent right to dispose of the title to any part of said soils in such manner as she might deem proper, subject only to the paramount right of navigation over the waters, so far as such navigation might be required by the necessities

of commerce with foreign nations or among the several states the regulation of which was vested in the general government. *Pollard v. Hagen*, 3 How. 212; *Mumford v. Wardwell*, 6 Wall. 436, 18 L.Ed. 761."

See Also:

Shively v. Bowlby, 152 U.S. 1, 38 L.Ed. 331

Knight v. United Land Assn., 142 U.S. 161, 35 L.Ed. 974

Pollard v. Hagan, 3 How. 212, 11 L.Ed. 565

Borax Consolidated v. Los Angeles, 296 U.S. 10, 56 S. Ct. 23, 80 L.Ed. 9

Van Brocklin v. Anderson, 117 U.S. 151, 158, 29 L.Ed. 845, 847, makes the statement:

"The United States do not and cannot hold property, as a monarch may, for private or personal purposes."

The coastal states of the Union have the right to define their boundaries into the sea to the limit permitted by international law and co-extensive with the boundaries of the Federal Government, and within such boundaries the principle of dual sovereignty is applied just as it is anywhere else in the domain of the state. Thus the Court held in *Manchester v. Commonwealth of Massachusetts*, (1890) 139 U.S. 240, 264, 35 L.Ed. 159, 166:

"The extent of the territorial jurisdiction of

> Massachusetts over the sea adjacent to its coast is that of an independent nation; and, except so far as any right of control over this territory has been granted to the United States, this control remains with the State. * * * Within what are generally recognized as the territorial limits of States by the law of nations, a State can define its boundaries on the sea and the boundaries of its counties * * * * *"

The only conclusion to be drawn from the foregoing authorities is that Louisiana's boundaries are at the edge of the Continental Shelf where the United States has declared the national boundary to be; that the United States within these boundaries can only exercise the powers conferred on it by the Constitution; and that anything provided to the contrary in the Submerged Lands Act and the Outer Continental Shelf Lands Act is illegal and unconstitutional.

C. THE SUBMERGED LANDS ACT AND THE OUTER CONTINENTAL SHELF LANDS ACT ARE VALID PROVIDED THEY DO NOT VIOLATE FUNDAMENTAL LAW AND TREATIES.

1. Congress May Not Extend the National Boundary Without Extending State Boundaries Co-Extensively.

Although Congress has the right to extend the boundaries of the nation seaward to the full limit permitted by international law, such an extension of

boundaries can in no way deny that the boundaries of the states are the same as those of the nation.[10] Nor is there any reason why the dual sovereignty principle inherent in our republican form of government and guaranteed by the Constitution, should not apply to the area in the sea thus included in the boundaries of the United States and the individual coastal states. Such an extension of the national and the state domains must in any event be made in accordance with treaty obligations and must follow constitutional limitations. Accordingly the Submerged Lands Act and the Outer Continental Shelf Lands Act are valid only insofar as they do not violate provisions of the fundamental law and treaties made pursuant thereto.

However these Acts of Congress do transgress the limitations of the Constitution and the agreement made with France in the Treaty of Paris regarding the Louisiana Territory. In Paragraph IV of its Answer (p. 4-7) Louisiana avers that these Acts are unconstitutional, null, and void in the following respects:

> 1. To the extent that said acts permit the federal government to exercise proprietary rights in said submerged lands and resources, they are violative of the Treaty of Paris entered into by the United States with France on April 30, 1803 for the cession of Louisiana to the United States, whereby the latter obligated itself to incorporate the purchased territory of Louisiana into the Union according to the principles of the federal

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[10]Manchester v. Mass., 139 U.S. 240, 35 L.Ed. 159.

constitution, and to maintain the inhabitants of Louisiana in their property in the territory with all its rights and appurtenances in the same manner as they had been acquired by the French Republic, and to the same extent as when this territory was in the hands of Spain, and that it had when France possessed it, (8 Stat. 200). Congress was bound by the Treaty of Paris to hold the Louisiana Territory in trust for the states to be formed from it, and could not, and did not attempt to retain any federal domain southward from Louisiana in the Gulf of Mexico when it established the State of Louisiana in 1812. The declarations of the executive in 1945, and of the Congress in 1953, that the southern boundary of the United States extended further seaward than it had been previously recognized could not legally create a new and separate federal domain.

2. Said acts, to the extent that they may recognize federal ownership of said lands and resources, are violative of Article IV Section 3 and 4 of the United States Constitution. To such extent said acts would unlawfully permit the federal government to exercise the prerogatives of the crown in a monarchial form of government, would permit it to invade property and property rights guaranteed to the State of Louisiana, and would unlawfully change and restrict the title and boundaries of the State without its consent.

3. Insofar as said acts confer or recognize title and property rights in the United States and limit or restrict the boundaries or the title of Louisiana in said submerged lands and mineral resources of the Continental Shelf, they exceed

and go beyond the powers of the federal government enumerated in the United States Constitution and are therefore in conflict with the Ninth Amendment thereto.

4. Said acts insofar as they attempt to grant to the United States title and ownership of the subsoil and mineral resources of the Continental Shelf violates the Tenth Amendment of the United States Constitution which reserves to the States all powers and rights not specifically granted to the United States. Louisiana has not relinquished to the federal government any title to, or ownership or right of possession of the seabed, subsoil and mineral resources of the Continental Shelf within its boundaries.

The constitutionality of these acts was considered and approved by this Court in the case of *Alabama v. Texas*, 347 U.S. 272, 74 S.Ct. 481, 98 L.Ed. 689. However in that case the only objection raised by the plaintiff was that Congress had no right whatever to dispose of the federal government's "paramount rights" with respect to the submerged lands, since the "paramount rights" of the United States do not constitute "property" which Congress may dispose of within the meaning of Article IV, Section 3 of the Constitution. The pleas of unconstitutionality made by Louisiana here were obviously not involved in the cited case.

2. Our Fundamental Law Prescribes the Only Methods By Which the United States May Acquire Ownership of New Territory

In *U.S. v. California*, 332 U.S. 19, 67 S.Ct. 1658, 91 L.Ed. 1889 Justice Frankfurter in his dissenting opinion after propounding the above question as to the source of title claimed by the United States said (332 U.S. 44-5):

> " . . . Ownership implies acquisition in the various ways in which land is acquired—by conquest, by discovery and claim, by cession, by prescription, by purchase, by condemnation. When and how did the United States acquire this land?
>
> . . . That has not been remotely established except by sliding from absence of ownership by California to ownership by the United States."

Our fundamental law which enumerates all the powers granted by the States to the Federal Government outlines the only methods by which the latter may acquire new territory.

The first method is set forth in Section 8, Clause 11 of Article I which gives Congress the power to declare and wage war. An incident to war is the conquering of territory. The nation may therefore acquire territory by conquest.

The second method whereby the United States may acquire territory is found in Section 2 of Article II which gives the President, with the concurrence of the

Senate the power to enter into treaties and compacts with foreign nations. So the national government may by treaty with foreign nations acquire new territories.

A third method whereby the central authority may acquire lands and properties is set forth in Section 8, Clause 17 of Article I of the Constitution. This clause of the Constitution gives the Congress the right to purchase property by the consent of the Legislature of the State in which such property may be located, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings.

The United States did not acquire the bed of the Gulf of Mexico to the edge of the Continental Shelf by conquest, nor did it obtain title by discovery and possession. Nor did the United States acquire these submerged lands by any provision of the Constitution or by any act of purchase or cession from the coastal states.

If the central government acquired it by purchase or cession from a foreign nation, then it must rely on the terms of the Louisiana Purchase and the Treaty with France. But that treaty obligated it to hold these lands in trust, and in trust only, for the States to be formed out of the lands and seas included in the cession. Even without this express obligation, the principles of our republican form of government would require the Federal Government to hold these

lands and seas in trust for the future states to be formed.[11]

The Submerged Lands Act states that the Federal Government has no title to submerged lands within the historic boundaries of the States. This lack of title is implicit in the language of Section 3 of the act that the title to these lands and their resources are *recognized* and *confirmed* in the respective states and that the United States thereby "releases and relinquishes all right, title and interest of the United States, *if any it has*, in and to all said lands—and resources."

If the United States has no title to, or ownership in, the marginal belt lying three leagues from coast in the Gulf or three miles from coast in the two oceans, how and when did it manage to leap frog this belt and claim territory further at sea which had long been occupied and possessed by the coastal States? If the theory of paramount rights and external sovereignty cannot and does not apply within three leagues of the coast by what theory does it apply ten twenty, thirty or forty leagues from Coast?

The answer to these questions is that paramount rights and external sovereignty have nothing to do with

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[11]New Orleans v. U.S. 10 Pet, 662, 737, 9 L.Ed. 573, 602
Pollard v. Hagan, 3 How. 212, 11 L.Ed. 565
Dred Scott v. Sanford, 19 How. 393, 446-8, 15 L.Ed. 691, 718
Knight v. U.S. Land Assn., 142 U.S. 161, 183, 12 S.Ct. 264, 35 L.Ed. 974, 982
Borax Consolidated v. Los Angeles, 296 U.S. 10, 15, 80 L.Ed. 9, 14

property rights. Paramount rights relate to the prior right of Congress to regulate navigation and commerce and provide for the national defense. External sovereignty gives the national government the exclusive right to handle the affairs of this nation with other countries, to make treaties and international agreements. The theory of the California, Texas and Louisiana cases that such rights can be translated into ownership by executive or judicial decree was, as stated in *The Superior Oil Co. v. Fontenot*, Supra, nullified by Congress when it passed the Submerged Lands Act.

At the time of the adoption of the Constitution the framers were certainly of the opinion that the Federal Government owned no land within the jurisdiction and territory of any State. If title to lands had passed didectly from the Crown to the Union in 1776 the writers of our fundamental law were not aware of it. They undoubtedly viewed the United States as being composed solely of the territory of the original thirteen States.

When the Confederation was formed before the Constitution was adopted the Confederated States owned no land either within or without the jurisdiction or territory of the thirteen States. In fact the Articles of the Confederation (Art. IX) specifically provided:

> "No State shall be deprived of territory for the benefit of the United States."

The foregoing language of the Articles of Confederation was not embodied in the Constitution itself but it is apparent that the same principle pervaded the fundamental law because the Constitution enumerated the manner in which the United States might acquire territory, as has been shown hereinabove. Since the Central Government is one of limited powers, it can only acquire territory in the manner specified by the Constitution. None of these powers form the basis for any title in the Gulf of Mexico, or the Continental Shelf adjoining Louisiana.

No sound argument can be made that these submerged lands are unclaimed lands which Congress can add to the national domain; first, because they constitute a part of the Louisiana Purchase which was held in trust for the State; and second, because they have been claimed and physically possessed by the State since its admission to the Union; and finally because the Constitutional guarantee of sovereignty under our republican form of government, guaranteed by the 9th and 10th Amendments, does not permit the United States thus to colonize or appropriate lands bordering on the individual States:

In *New Orleans v. The United States*, 10 Pet. 662, 723-4, 9 L.Ed. 573, 596, this Court ruled:

> "The power of appropriating private property to public purposes is an incident of sovereignty. And it may be, that by the exercise of this power, under extraordinary emergencies, property which had been dedicated to public use, by the enjoy-

ment of which was principally limited to a local community, might be taken for higher and national purposes, and disposed of on the same principles which subject private property to be taken.

In a government of limited and specified powers like ours, such a power can be exercised only at the mode provided by law; but in an arbitrary government, the will of the sovereign supersedes all rule on the subject."

It is therefore apparent that lands so long possessed as public property by the State cannot be appropriated by the Federal Government except for a necessary national purpose, and by following the procedures required by law of eminent domain.

3. Obligations Assumed by the United States in the Treaty of Cession of Louisiana Are Protected By Article VI and by the Fifth Amendment to the Constitution.

Since the Treaty of Paris of 1803 required the United States to hold the Louisiana Territory in trust for the States to be formed from it, and that treaty is by Article VI of the Constitution the Supreme Law of the Land, the United States cannot violate that trust at this time.

If the Court should find that these Acts of Congress do limit and restrict Louisiana's historic boundaries to three miles or three leagues offshore then they are unconstitutional and illegal to that extent. This is so because the Treaty of Cession made the United

States a trustee for Louisiana and vested in the State to be formed the title to Louisiana to the same extent that it had "in the hands of Spain, and that it had when France possessed it." The Treaty also guaranteed to the inhabitants of the territory protection in the "free enjoyment of their property: and this protection extended to the territory "with all its rights and appurtenances, as fully and in the same manner as they had been acquired by the French Republic. Pertinent portions of this treaty are contained in Defendant's Appendix D. Such treaties combine the elements of legislation, contract, and grant and are interpreted with extreme liberality to effectuate the manifest purposes and objects sought to be achieved.

Sutherland on Statutory Construction (3rd Ed.) Sec. 6507, Vol. 3, p. 262

Tucker v. Alexandroff, 183 U.S. 424, 46 L.Ed. 264,

Sullivan v. Kidd, 254 U.S. 433, 65 L.Ed. 344,

Hauenstein v. Lynham, 100 U.S. 483, 25 L. Ed. 628

Since the Treaty of Cession is a contract in which the United States assumes obligations toward Louisiana and vests in the State certain property rights these vested rights cannot be divested by any provision contained in the Acts of Congress of 1953.

Pacific Mail S.S. Co. v. Joliffe, 2 Wall. 450, 17 L.Ed. 805,

Santovincenzo v. Egan, 284 U.S. 30, 76 L.Ed. 151,

Chae Chan Ping v. U. S., 130 U.S. 581, 32 L. Ed. 1068,

Chirac v. Chirac, 2 Wheat. 259, 4 L.Ed. 234,

Carneal v. Banks, 10 Wheat. 181, 6 L.Ed. 297.

Even if the Congress were to undertake to abrogate the treaty by which this territory was acquired, and it has not remotely suggested an intent to do so, such an abrogation would not operate to deprive Louisiana of rights vested in it 145 years ago, and of territory occupied by the State ever since.

The Treaty of Cession in guaranteeing the property rights of the people of the Louisiana territory used the word property in its broadest sense. Chief Justice Marshall in *Soulard v. U.S.*, 4 Pet. 511, 7 L.Ed. 938, said:

> "In the treaty by which Louisiana was acquired, the United States stipulated that the inhabitants of the ceded territory should be protected in the free enjoyment of their property . . . .
>
> The term 'property', as applied to lands, comprehends every species of title, inchoate or complete. It is supposed to embrace those rights which lie in contract—those which are executory as well as those which are executed. In this respect the relation of the inhabitants to their government is not changed. *The new government takes the*

place of that which has passed away." (Emphasis added)

This decision has been approved and followed in many succeeding cases, including:

Strother v. Lucas, 12 Pet. 419, 435-6, 9 L.Ed. 1137, 1147,

Carpenter v. Rannels, 19 Wall. 138, 141, 22 L.Ed. 77, 78,

Bryan v. Kennett, 113 U.S. 179, 192, 28 L.Ed. 908, 912,

Knight v. United Land Assn., 142 U.S. 161, 183, 35 L.Ed. 974, 982

The property rights referred to in the Treaty of Cession apply to public as well as private property rights.

New Orleans v. U. S., 10 Pet. 662, 723, 9 L.Ed. 573, 597

Furthermore these contract obligations and property rights secured to Louisiana in this Treaty with France are protected by the 5th Amendment to the Constitution. Although a treaty may be subsequently abrogated by a statute, vested rights cannot be divested without violating this amendment, which is a specific limitation on the powers of the United States.

Lynch v. U. S., 292 U.S. 571, 78 L.Ed. 1484.

The Submerged Lands Act and the Outer Continental Shelf Lands Act cannot therefore be construed to restrict Louisiana's historic boundaries without vio-

lating Article VI and the Fifth Amendment to the Constitution.

4. Louisiana's Rights in the Submerged Lands Are Protected by Article IV Sec. 3, and the 9th and 10th Amendments to the Constitution

Other reasons why the United States may not seize for its own use property held in trust for Louisiana are found in Article IV Sections 3 and 4 of the Constitution.

Section 3 of Article IV provides for the creation of new States, and this provision has been construed to prohibit any change in a State's boundary without the consent of its legislature.

Shively v. Bowlby, 152 U.S. 1, 27, 38, 38 L.Ed. 331, 341,

Louisiana v. Miss., 202 U.S. 1, 40, 50 L.Ed. 913, 927,

New Mexico v. Colorado, 267 U.S. 30, 69 L. Ed. 499.

This same section gives to Congress the power to dispose of, and make all needful rules and regulations respecting the territory or other property belonging to the United States, *but without prejudice to the rights and claims of any particular State.* Louisiana has an historic claim secured by treaty and contract to all submerged lands adjoining its shores to the 27th parallel of latitude and the United States cannot do anything

respecting this territory to prejudice Louisiana's rights and claims, whether such rights be "inchoate or complete".

The provisions of Section 3, Article IV of the Constitution prohibit the United States from appropriating to itself property which would pass to Louisiana as a necessary incident to its sovereignty and which it obligated itself to hold in trust for the State without the consent of the latter.

Section 4 of Article IV of the Constitution reads in part:

> "The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them from Invasion."

The obligation of the United States to protect each State from invasion was not written into the Constitution as a protection against foreign invasion alone. The words foreign invasion appeared in the original draft of the Constitutionl Convention of 1787, but "foreign" was stricken from the final draft. (Elliotts Debates vol 5 p 381, 497, 564). This requirement therefore includes, of necessity, a prohibition against an invasion by the federal government into the domain of any State. Since the Submerged lands adjoining the coast of Louisiana became the property of the State as an attribute of sovereignty and in fulfilment of the trust imposed by the Louisiana Purchase Treaty, the federal government cannot appropriate

these lands and resources to its own use without running counter to this prohibition of the Constitution.

Nor would the guarantee of a Republican Form of Government mean anything if the United States exercised the prerogatives of a monarch and by misapplication of its superior power in certain fields seized this property of the State of Louisiana. The maintenance of the independent existence of the States is as much the concern of the Constitution as the preservation of the Union. As this Court said in *Texas v. White*, 74 U.S. (7Wall) 700, 725, 19 L.Ed. 227, 237:

> "But the perpetuity and indissolubility of the Union by no means implies the loss of distinct and individual existence, or of the right of self government by the States. Under the Articles of Confederation each State retained its sovereignty, freedom and independence, and every power, jurisdiction and right not expressly delegated to the United States. Under the Constitution, though the powers of the States were much restricted, still all powers not delegated to the United States, nor prohibited to the States, are reserved to the States respectively, or to the people. And we have already had occasion to remark at this term, that 'the people of each State compose a State, having its own government, and endowed with all the functions essential to separate and independent existence,' and that 'without the States in union, there could be no such political body as the United States.' Lane Co. v. Oregon, infra, 101. Not only, therefore, can there be no loss of separate and independent autonomy to the States, through their

union under the Constitution, but it may be not unreasonably said that the preservation of the States, and the maintenance of their governments, are as much within the design and care of the Constitution as the preservation of the Union and the maintenance of the National Government. The Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States.

When therefore, Texas became one of the United States, she entered into an indisoluble relation. All the obligations of perpetual union, and all the guaranties of republican government in the Union, attached at once to the State. . . "

The following statement taken from the opinion rendered In Re Heff, 197 U.S. 488, 505, 49 L.Ed. 848, 855, is most appropriate here:

"In this Republic there is a dual system of government, national and state. Each within its own domain is supreme, and one of the chief functions of this Court is to preserve the balance between them, protecting each in the power it possesses, and preventing any trespass thereon by the other."

Louisiana in this case asks this Court to preserve its right to property which is an attribute of State sovereignty, and to protect the State from trespass by the United States[12] Under our dual system of sover-

[12]Parker v. Brown, 317 U.S. 341, 87 L.Ed. 315;
Skiriotes v. Florida, 313 U.S. 69, 77, 85 L.Ed. 1193, 1200;
Osborn v. Ozlin, 310 U.S. 53, 62, 84 L.Ed. 1074, 1078;
Ashton v. Cameron County Co., 298 U.S. 513, 531, 80 L.Ed. 1309, 1314;
Florida v. U.S., 282 U.S. 194, 211-12, 75 L.Ed. 291, 302;
Mayor of N. Y. v. Miln, 11 Pet. 102, 139, 9 L.Ed. 648, 662.

eignty, guaranteed by the 9th and 10th Amendments to the Constitution, the Court must preserve the balance between the State and the nation in this respect.

D. LOUISIANA'S HISTORIC BOUNDARIES EXTEND TO THE 27TH PARALLEL OF LATITUDE

A determination of Louisiana's historic boundaries is one of the requirements of Section 4 of the Submerged Lands Act, (43 U.S.C. 1312), which reads, in part, as follows:

> "Nothing in this Section is to be construed as questioning or in any manner prejudicing the existence of any State's seaward boundary beyond three geographic miles if it were so provided by its constitution or laws prior to or at the time such State became a member of the Union." (67 Stat. 31, 43 U.S.C. 1312)

The above quoted provision is also in accord with the treaty obligations assumed by the United States in the Louisiana Purchase. However, those provisions which seek to limit boundaries of the State three leagues or three miles from coast are contrary to and in conflict with the treaty whereby the United States purchased the Louisiana territory.

A determination of Louisiana's historic boundaries, among other things, involves an interpretation and application of the provisions of the Treaty of Paris between France and the United States on April 30 in

1803 whereby the territory of Louisiana was ceded to the United States.[13] To properly interpret this treaty recourse must be had to certain prior treaties between France and Spain, i. e., the Treaty of St. Ildefonso dated September 15, 1880 and the Treaty of Fontainbleau dated November 3, 1762. These treaties and various proclamations and edicts of the Kings of France and Spain furnish evidence concerning the historic boundaries of Louisiana and must be considered in interpreting the Act of Congress creating the Territory of Orleans, [14] and the Acts of Congress admitting the State of Louisiana into the Union.[15] Excerpts from these and other treaties appear in Defendants Appendix, Sections D. and E.

The Acts of Congress creating the Territory of Orleans, and thereafter forming this territory into the State of Louisiana, were undoubtedly passed for the purpose of carrying out the obligations of the United States assumed in the Treaty of Paris whereby this territory was acquired from France. The first Article of this treaty reads, in part.[16]

". . . The French Republic . . . doth hereby cede to the said United States, in the name of the French Republic, for ever and in full sovereignty,

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[13]8 Stat. 200, 2 Miller's Treaties 498.

[14]2 Stat. 283, approved March 26, 1804.

[15]2 Stat. 701, approved April 8, 1812
2 Stat. 708, approved April 14, 1812

[16]Miller's Treaties, Vol. 1, Page 498, 8 Stat. 200.

the said territory, *with all its rights and appurtenances* as fully and in the same manner as they had been acquired by the French Republic." (Emphasis supplied)

This paragraph in the Treaty of Paris is preceded by a recital taken from the Treaty of St. Ildefonso of September 15, 1800 which is also quoted, in part:

> "His Catholic Majesty (Spain) promises and engages, on his part, to retrocede to the French Republic . . . the colony or province of Louisiana, with the same extent that it now has in the hands of Spain, and that it had when France possessed it; and such as it should be after the treaties subsequently entered into between Spain and other States."

Article 3 of the Treaty of Paris concerning the cession of the Louisiana territory to the United States, provides:

> "The inhabitants of the ceded territory shall be incorporated in the Union of the United States, and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages and immunities of citizens of the United States; and in the meantime they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion they profess."

The Articles of the Louisiana cession thus obligated the United States to incorporate Louisiana into the Union according to the principles of the Federal Con-

stitution, and to maintain the inhabitants of Louisiana in their property in the territory with all its rights and appurtenances in the same manner as they had been acquired by the French Republic, and to the same extent as when this territory was in the hands of Spain, and that it had when France possessed it. In other words, the United States agreed that the people of Louisiana would be guaranteed in their ownership of the territory within its historic boundaries when the State should be formed and admitted to the Union. It is therefore important to determine the extent of the Louisiana territory and its boundaries when it was successively occupied by Spain and France. We are here concerned, of course, with only that portion of the territory of Louisiana bordering on and in the Gulf of Mexico, which was incorporated into the State in 1812.

1. Ownership of Submerged Lands Passed to the State As an Attribute of Sovereignty, and Is Implied in the Act of Admission Describing Louisiana's Boundaries

The Act of April 8, 1812 describes Louisiana boundaries in part as follows:

> ". . . Beginning at the mouth of the River Sabine; thence by a line to be drawn along the middle of said river, including all islands, to the thirty-second degree of latitude; thence due north to the northern-most part of the thirty-third degree of north latitude; thence along the said parallel of latitude to the River Mississippi; thence

down the said river to the River Iberville; and from thence along the middle of the said river and Lakes Maurepas and Pontchartrain to the Gulf of Mexico; thence bounded by the said gulf to the place of beginning, including all islands within three leagues of the coast."

The Attorney General of the United States contends that the words "bounded by the said Gulf including all islands within three leagues of the Coast" mean that Louisiana's southern boundary is a land boundary and that its dominion stopped at the shore line of the Gulf of Mexico.

No one has yet suggested why Congress in 1812 should think that islands three leagues distant from coast should be a part of the territory belonging to Louisiana but the submerged land connecting the islands with the mainland should not.

If the southern boundary is a land boundary, as claimed by government counsel, then by implication the transfer of sovereignty over this portion of the Louisiana territory carries with it sovereignty over the submerged lands and territorial waters to the full extent of Louisiana's historic boundaries.

In the early case of *Martin v. the Lessee of Waddell.* (1842), 16 Pet. 367, 413-17, 10 L.Ed. 997, 1014-15, this Court held that the lands under waters adjoining the shores of a state pass to the transferee on a transfer of sovereignty, as one of the royalties incident to the powers of government, and are to be held in the

same manner and for the same purposes that the navigable waters of England and the soils under them are held by the Crown; and it would require plain language in the act transferring sovereignty over the territory in question to persuade the Court that the State's interest in such waters and submerged lands were retained by the transferror. The following excerpts are taken from the opinion of Mr. Chief Justice Taney in that case:

> " . . . The estate and rights of the king passed to the duke in the same condition in which they had been held by the crown, and upon the same trusts. Whatever was held by the king was a prerogative right passed to the duke in the same character. * * * And in the judgment of the court, the land under the navigable waters passed to the grantee as one of the royalties incident to the powers of government; and were to be held by him in the same manner, and for the same purposes that the navigable waters of England, and the soils under them, are held by the crown.
>
> This opinion is confirmed by referring to similar grants for other tracts of country upon this continent, made about the same period of time. * * * In all of them from the time of the settlement to the present day, the previous habits and usages of the colonists have been respected, and they have been accustomed to enjoy, in common, the benefits and advantages of the navigable waters for the same purposes, and to the same extent that they have been used and enjoyed for centuries in England. Indeed, it could not well have

been otherwise. * * * And it would require very plain language in these letters patent to persuade us that the public and common right of fishery in navigable waters, which has been so long and so carefully guarded in England, and which was preserved in every colony founded on the Atlantic borders, was intended, in this one instance, to be taken away. But we see nothing in the charter to require this conclusion. * * *

* * * And if the great right of dominion and ownership in the rivers, bays, and arms of the sea, and the soils under them, were to have been severed from the sovereignty, and withheld from the crown; if the right of common fishery for the common people, stated by Hale in the passage before quoted, was intended to be withdrawn, *the design to make this important change in this particular territory would have been clearly indicated by appropriate terms; and would not have been left for inference from ambiguous language.* (Emphasis supplied)

. . . And wher the people of New Jersey took possession of the reins of government, and took into their own hands the powers of sovereignty, the prerogatives and regalities which before belonged either to the Crown or the Parliament, became immediately and rightfully vested in the State. * * *"

The principles of the foregoing decision have been approved in many subsequent cases.[17]

This Court has on many occasions declared that State ownership of submerged lands seaward of its shores is an attribute of sovereignty possessed by the State though not expressly provided for in the act creating the State, and even though such State may have never seen fit to define its limit.[18] The follow-

[17]Den v. The Jersey Co., 15 How. 426, 432-3, 14 L.Ed. 757, 760-1.
Barney v. Keokuk, 94 U.S. 324, 338, 24 L.Ed. 224;
Hardin v. Jordan, 140 U.S. 371, 380-2, 35 L.Ed. 428, 433;
Shively v. Bowlby, 152 U.S. 1, 16, 47, 38 L.Ed. 337, 349;
Mann v. Tacoma Land Co., 153 U.S. 273, 283, 38 L.Ed. 714, 717;
Alaska Pac. Fisheries v. U. S., 248 U.S. 78, 87-9, 63 L.Ed. 138, 140-1;
Mass. v. New York, 271 U.S. 65, 87-90, 70 L.Ed. 838, 848-9;
New Jersey v. Delaware, 291 U.S. 361, 373-4, 78 L.Ed. 847, 853.

[18]Pollard v. Hagan, 44 U.S., 3 How. 212, 11 L.Ed. 565;
Weber V. Harbor Comm. (1873) 18 Wall. 57, 66, 21 L.Ed. 798;
McCready v. Virginia, 94 U.S. 391, 24 L.Ed. 248;
Packer v. Bird (1890), 137 U.S. 661, 672, 34 L.Ed. 819, 821-2;
Hardin v. Jordan (1890), 140 U.S. 371, 35 L.Ed. 428;
Illinois Cent. R. Co. v. Illinois (1892), 146 U.S. 387, 434-5, 452-460, 36 L.Ed. 1018, 1036-7, 1042-45;
Shively v. Bowlby (1894), 152 U.S. 14-16, 38 L.Ed. 331, 336-7, 341;
The Abbey Dodge v. U.S., 223 U.S. 166, 173-4, 177, 56 L.Ed. 390, 392-4;
Massachusetts v. New York (1926), 271 U.S. 65, 89, 70 L.Ed. 838, 849
U. S. v. Oregon, 295 U.S. 1, 14, 79 L.Ed 1267, 1274;
Hackworth's Digest of International Law, Vol. 1, p. 623-4.

ing is quoted on this point in the case of *Hardin v. Jordan* (1890), 140 U. S. 371, 381, 35 L.Ed. 428, 433:

> ". . . Such title to the shore and lands under water is regarded as incidental to the sovereignty of the State—a portion of the royalties belonging thereto and held in trust for the public purposes of navigation and fishery-and cannot be retained or granted out to individuals by the United States Pollard v. Hagan, 44 US 3 How. 212 (11:565); Goodtitle v. Gibbe, 50 US, 9 How. 471 (18:220); Weber v. Board of Harbor Comrs. 84 US 18 Wall. 57 (21:798). Such title being in the State, the lands are subject to state regulation and control, under the condition, however, of not interfering with the regulations which may be made by Congress with regard to public navigation and commerce. The State may even dispose of the usufruct of such lands, as is frequently done by leasing oyster beds in them ,and granting fisheries in particular localities. * * * * *"

We also quote from the opinion in *Massachusetts v. New York* (1926), 271 U. S. 65, 89, 70 L.Ed. 838, 849:

> "The dominion over navigable waters and property in the soil under them, are so identified with the exercise of the sovereign powers of government that a presumption against their separation from sovereignty must be indulged. . . . It follows that, wherever there is a grant by a State. . . of the rights and title of government and sovereignty over a specified territory. . . . the

grant . . . carries with it as an incident, title to lands under navigable waters."

In the case of *State v. Ruvido* (Maine, 1940), 15 Atl. 2d. 293, 297, the Supreme Court of Maine held that, even in the absence of a statute, a State's boundary and jurisdiction automatically include the marginal sea, saying:

> "Such a statute, however, would be only declaratory of the law . . . the legislature by its act cannot extend the jurisdiction of the state beyond the limits generally rceognized by law. The sovereignty over territorial waters exists even though the state has never seen fit to define their limit. The State of Maine has exercised this authority as to portions of these waters. . . There is no reason why it may not assume control over all."

The attention of this court is called to quotation, from Mouton, "*The Continental Shelf*," found in Appendix B in which the doctrine of the extension of land mass into the continental shelf and its continuation of and association with the shore is stressed as a matter of necessity.

2. The Louisiana Purchase Obligated the United States To Hold the Territory of Louisiana in Trust for Future States to the Full Extent that the Territory Had Been Claimed by France and Spain.

The Territory of Orleans, that part of the Louisiana Purchase which became the State of Louisiana, included all submerged lands and waters extending into

the Gulf of Mexico that had previously been under the claim and dominion of France and Spain. The United States acquired this territory from France, in trust, for the inhabitants of the territory and for the State to be formed out of the property thus ceded by France.[19] This obligation of trust is expressly stipulated in Article 3 of the Treaty of Paris whereby the territory of Louisiana was ceded by France to the United States.[20] During the 18th Century France and Spain, without protest from other powers, and with the consent of Great Britain, held dominion over the Continental Shelf of Louisiana as far as forty leagues offshore.

As early as 1763 Great Britain, France and Spain, who then possessed the entire North American Continent, agreed that fifteen and even thirty leagues was a reasonable measure of the width of territorial waters. A treaty between these three powers signed at

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[19]New Orleans v. U. S., 10 Pet. 662, 737, 9 L.Ed. 573, 602;
Pollard v. Hagan, 3 How. 212, 11 L.Ed. 566;
Goodtitle v. Kibbe, 9 How. 471, 13 L.Ed. 220;
Doe v. Beebe, 13 How. 25, 14 L.Ed. 35;
Barney v. Keokuk, 93 U.S. 324, 24 L.Ed. 224;
Dred Scott v. Sanford, 19 How. 393, 446-8, 15 L.Ed. 691, 718;
Knight v. U. S. Land Assn. 142 U.S. 161, 183, 35 L.Ed. 974, 982;
Shively v. Bowlby, 152 U.S. 43, 38 L.Ed. 337, 347;
Borax Cons. v. Los Angeles, 296 U.S. 10, 15, 80 L.Ed. 9, 14.

[20]8 Stat. 200-7;
2 Miller's Treaties 498.

Paris on February 10, 1763 stipulated such a limit for Britain's territorial waters off Nova Scotia and New Foundland.[21]

In 1790 Spain and England agreed to a ten league territorial limit offshore for Spain's possessions in the Pacific Ocean and in the South Seas (Gulf of Mexico and Carribbean Sea and in South America) and a like boundary for England's possessions in North America. This latter agreement was in the form of a treaty signed at Escurial on October 28, 1790—just ten years before Spain ceded Louisiana to France in the Treaty of St. Ildefonso.[22] This Treaty contains the following provisions in Articles 3, 4, and 6:

"Article III

". . . It is agreed, That their respective Subjects shall not be disturbed or molested, either in navigating or carrying on their Fisheries in the Pacific Ocean, or in the South Seas, or in landing on the Coasts of those Seas, in Places not already occupied, for the Purpose of carrying on their Commerce with the Natives of the Country * * *"

"Article IV.

His Britannic Majesty engages to take the most effectual Measures to prevent the Naviga-

[21]Journal House of Commons, 18 March 1763, p. 589.

[22]Convention between His Britannic Majesty and the King of Spain—Journal House of Commons, December 3, 1790, p. 30. (See Appendix C)

tion and Fishery of His Subjects in the Pacific Ocean, or in the South Seas, from being made a Pretext for illicit Trade with the Spanish Settlements; and, with this View, it is moreover expressly stipulated, that British Subjects shall not navigate, or carry on their Fishery, in the said Seas, within the Space of Ten Sea Leagues from any Part of the Coasts already occupied by Spain."

"Article VI.

It is further agreed, with respect to the Eastern and Western Coasts of South America, and to the Islands adjacent, That no Settlement shall be formed hereafter, by the respective Subjects in such Parts of those Coasts as are situated to the South of those Parts of the same Coasts, and of the Islands adjacent, which are already occupied by Spain: * * *"

The provisions of this treaty were never questioned by any nation. France had then surrendered all her possessions in North America, and neither France nor any other nation protested this claim to these territorial waters in the American seas.

During the time that France possessed Louisiana her boundaries extended beyond as far as forty leagues to the 27th parallel in the Gulf, and included the entire Continental Shelf.

As stated in "The Louisiana Purchase", an historical sketch from the files of the General Land Office issued by the Department of the Interior in 1933 and re-printed in 1955 (Page 11):

"French title to the territory called 'Louisiana' in the Mississippi Valley had its origin and

was based upon the discovery and Proclamation of LaSalle, April 9, 1682."

LaSalle in his Proclamation of April 9, 1682 took possession of the country of Louisiana in the name of France with its Seas, ports and bays as far as the mouth of the Mississippi in the Gulf of Mexico to the 27th degree of latitude. This parallel of latitude extends some forty leagues seaward into the Gulf. This proclamation was made by Notarial Act and read with great ceremony in the presence of French Troops and a number of Indian tribes. It reads, in part.[23]

"In the name of the Most High, Mighty, Invincible and Victorious Prince, Louis the Great, by the Power of God, King of France and Navarre, 14th of that name, this the 9th day of April, one thousand six hundred and eighty-two, I, by virtue of the commission of his Majesty, which I hold in my hand and which may be seen by all whom it may concern, have taken and do now take possession of this country of Louisiana, the seas, ports, bays, adjacent straits, and all the nations, peoples, provinces, cities, towns, villages, mines, minerals, fisheries, streams, and rivers, comprised in the extent of said Louisiana, * * * as also along the River Colbert, or Mississippi and rivers which discharge therein—as far as its mouth in (dans) the sea or Gulf of Mexico about the 27th degree

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[23]Manuscript of Notarial Proclamation of LaSalle, Dept. of Marine Archives of Paris; (See Appendix D.)

"The Louisiana Purchase", issued by the General Land Office, Washington, D. C. (1955).

of the elevation of the North Pole, and also to the mouth of the River of Palms; * * *"

LaSalle therefore claimed the country of Louisiana and the adjacent seas to the 27th parallel of latitude *in the sea*, or Gulf of Mexico. The 27th parallel of latitude is the same latitude as that of the mouth of the River of Palms in Florida as claimed by LaSalle in the Proclamation. It is stated on Page 7 of "The Louisiana Purchase" that the Palm River is difficult to locate on the map of Florida as it is not named, but the old maps show it as a river emptying into Palm Sound, now called Sarasota Bay. Sarasota Bay is in the proximity of the 27th parallel of latitude. This parallel of latitude lies offshore from the State of Louisiana some 40 leagues into the Gulf of Mexico. The seas referred to in LaSalle's Proclamation and claimed as the property of France therefore extended 40 leagues into the Gulf of Mexico beyond the shores of Louisiana.

Again referring to the Proclamation of LaSalle, the "Louisiana Purchase" states:

> "These Acts of LaSalle were, in fact, the foundation of French ownership; and have been so considered by all nations since 1682."

The same pamphlet on "The Louisiana Purchase" states on page 12:

> "French title to the Gulf territory from the Mississippi River to Palm River, on the Gulf coast of Florida, as a part of original Louisiana, was as good as French title to the Mississippi Valley, for both districts came under the French flag at the

same time and for the same reason, viz, the discoveries of LaSalle and his proclamation based thereon, at the mouth of the Mississippi River, April 9, 1682. It therefore follows that subsequent cessions of 'the whole territory known under the name of Louisiana,' or of 'the colony or province of Louisiana, with the same extent * * * that it had when France possessed it', conveyed title to this territory just as surely as they conveyed title to territory drained by the Mississippi River and its tributaries, and the title thus conveyed was just as good."

LaSalle's claim to the 27th degree of latitude was not made in error. At that time explorers and navigators could make accurate measurements in latitude by the simple use of the quadrant although the determination of longitude was more difficult. LaSalle's claims were recognized by the American Department of State as being "certain, authentic and particular."

In a letter written by the Secretary of State, John Quincy Adams, addressed to the Spanish Minister, De Onis, under date of March 12, 1818, the statement is made:

"Of all the heroic enterprise which, in the sixteenth and seventeenth centuries signalized the discoveries of Europeans upon this Continent, there is not one of which evidence is more certain, authentic, particular, than those of LaSalle."

American State Papers, Vol. IV, p. 472

Some of the early publicists of International Law expressed the view that the shallowness of the waters

should be considered in determining the proper seaward limits of a littoral nation.

Valin in his work, *Nouveau commentaire sur l'ordonnance de la marine du mois d'aout 1681"* (1760), page 638 said:

> "Others, finally, have taken for the rule the extent of sea which can be seen from the shore; but this measure being uncertain by its nature, it would have been better, perhaps, to reckon the domain over the adjacant sea by the sounding-lead, and to assign its limits exactly at that point where the lead ceased to fetch bottom; so that, outside soundings, the sea would have been recognized as free for navigation and fishing, as being incapable of belonging to any one's domain."

To the same effect, see *Fauchille's "Treatise on International Public Law,"* 8th ed., Tome 1, 2nd part.

The sounding line was used to delineate the territorial limits of Louisiana by France. In 1705 an official French map of "The Coasts and Environs of the Mississippi River as Discovered by Monsieur de La Salle in 1683 and 1699" was prepared by N. de Fer, Geographer of the Dauphin. This map shows a sounding line which apparently went to the 100 fathom line and which bears the warning:

> "Les gros bastimens n' aproche pas la coste n'y ayant de fond que jusque a ces points."

The translation of the warning means that large ships (armed vessels) must not approach the coast beyond these points (this line). Defendants Map Ap-

pendix contains a reproduction of this 1705 map. The old French maps invariably show this line.

Louisiana's historic boundaries therefore were forty leagues into the Gulf "when France possessed it" and the Treaty between France and the United States signed at Paris, April 30, 1803 for the Louisiana Purchase obligated the United States to incorporate this territory in the State to be formed.

Although in later years, and for certain purposes only, the United States and Great Britain have championed the claim that territorial waters extend only three miles seaward, they have not consistently followed such a rule. From time to time they have in various respects made exceptions and agreed to a broader extent of territorial seas.[24]

The cannon-shot rule, which developed into a three mile rule in the nineteenth Century was accepted by some nations, and was applied originally to the shores of Europe. Because of the narrowness of the Continental Shelf there, the large number of small nations with limited coast lines, and the great population to be served, it was neither practical nor desirable to permit any one nation to claim and possess exclusive rights to a broader expanse of territorial waters than the range of cannon-shot, or 3 miles. These conditions did

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[24]Church v. Hubbart, 2 Cranch 187, 234-5, 2 L.Ed. 249, 265;

Riensenfeld, "Protection of Coastal Fisheries Under International Law", p. 131-6, 260;

Colombos, "International Law of the Sea", p. 103.

not exist in the new world, and particularly in the Gulf of Mexico where wider belts in the marginal seas were accepted as a rule.

Chief Justice Marshall in 1804, the year following the Louisiana Purchase, made the following statement in *Church v. Hubbart*, 2 Cranch 187, 234-5, 2 L.Ed. 249, 265:

> "In different seas, and on different coasts, a wider or more contracted range, in which to exercise the vigilance of the government, will be assented to. Thus in the channel, where a very great part of the commerce to and from all the north of Europe, passes through a very narrow sea, the seizure of vessels on suspicion of attempting an illicit trade, must necessarily be restricted to very narrow limits; but on the coast of South America, seldom frequented by vessels but for the purpose of illicit trade, the vigilance of the government may be extended somewhat further; and foreign nations submit to such regulations as are reasonable in themselves and are really necessary to secure that monopoly of colonial commerce, which is claimed by all nations holding distant possessions." * * *

As will be hereinafter shown the United States has never applied the so-called three mile rule to the coasts of the Gulf of Mexico. On the other hand it has consistently recognized a three-league boundary in the Gulf until 1945 when the President declared that the sub-soil and resources of the entire Continental Shelf "appertained" to the coastal States on all the

coasts of the United States. This is graphically borne out by excerpts contained in Defendants Appendix E, and Defendants Map Appendix.

E. LOUISIANA'S HISTORIC BOUNDARIES AND ITS CLAIM TO THE CONTINENTAL SHELF ARE IN ACCORD WITH INTERNATIONAL LAW

LaSalle's Proclamation in which he took possession of the territory of Louisiana including the sea to the 27th parallel of latitude was recognized as a matter of international law at that time. The entire Continental Shelf off Louisiana's coast is included within this parallel of latitude and the sub-soil in the Continental Shelf off the American coast and off the shores of other nations was recognized in International Law as a legitimate claim of the coastal State at the time when Louisiana was admitted to the Union and at this present time.

1. Treaties Between World Powers in the 17th and 18th Centuries Recognized Territorial Jurisdiction and Ownership of the Continental Shelves in the American Seas.

Long prior to the time Louisiana was admitted to the Union treaties were made between the nations that colonized the North American Continent relating to fishing "banks". A "bank" is defined as "an elevation coming nearer the surface than 100 fathoms, but not so near as 6 fathoms." See Encyclopediae Britannica, 1945 Ed., Vol. 16, p. 682.

The Treaty of Utrecht in 1713 concluded the war

of the Spanish Succession and consisted of a series of treaties between England, France, Spain, Austria, United Provinces, and other European nations. The treaty between Great Britain and France entered into on March 4, 1713, and assented to by the other nations, in Article VII prohibited France from fishing off the banks of Nova Scotia within 30 leagues from shore.

Later in the preliminary Articles of Peace signed at Fontainbleau, November 3, 1762, by Great Britain and France the provisions of the Treaty of Utrecht were reiterated and confirmed, except that the Gulf of St. Lawrence territory limits were fixed at three leagues from the British coast. Outside of the Gulf of St. Lawrence these territorial limits were fixed at "fifteen leagues from the coast of the Island of Cape Breton." In the definitive Treaty of Peace signed at Paris, February 10, 1763, Spain also signed the final articles which included the provisions as to territorial limits on the Canadian coast.

The definitive Treaty of Peace and Friendship between Britain and France signed as Versailles on the 3rd day of September, 1783, reaffirmed the Treaty of Utrecht of 1713. In Article V of this Treaty the Subjects of France were only permitted to fish outside of the Gulf of St. Lawrence, within 30 leagues of the coast as provided in the Treaty of Utrecht. However, they were permitted to fish within three leagues of the coast in the Gulf of St. Lawrence in conformity with the 5th Article of the Treaty of Paris of 1763.

Since the New Foundland banks did not extend

further than thirty leagues offshore the three Treaties referred to above recognized the right of Great Britain to extend its territorial claims so as to include the entire Continental Shelf in that area.

2. Nations Have Always Recognized the Right of Sedentary Fishing As An Attribute of Ownership of the Submerged Lands of the Continental Shelf.

Beginning in 1811 and continuing on down to date the family of nations has recognized the rights of littoral States to resources in the seabed and the subsoil of the Continental Shelf. Various nations and various dominions of the British Empire have been accorded the right to exclude other nations from exploiting the seabed and the sub-soil off their coasts. These rights dealt particularly with pearl fisheries and other sedentary fishing.

Ceylon protected its pearl fisheries as early as 1811 when it prohibited foreign ships from hovering within an area between the 4 and 12 fathom lines. This area stretched at some points to a distance 20 miles from the shore.[25]

In 1925 Ceylon enacted a new pearl fisheries ordinance which applied to "pearl banks" which were de-

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[25]Ceylon Ordinance Rev. ed. 1894, Vol. 1, p. 13;
Riesenfeld, "Protection of Coastal Fisheries Under International Law", p. 169;
Colombos, "International Law of the Sea", 3rd. ed. p. 306;
Vattel's Law of Nations (Chitty ed. 1883), p. 127-8.

fined as an area between the 3—and in some places 5-fathom line and the 100 fathom line. (The 100 fathom line marks the limit of the Continental Shelf off the Louisiana coast)[26].

Ireland passed its sea fisheries act in 1868 for the purpose of regulating oyster fishing in waters within a distance of 20 miles seaward from the straight line between Lambay Island and Carnsore Point."[27]

Various Australian States have a number of statutes protecting oyster and pearl fisheries covering areas that stretch out considerably in the sea. Thus Queensland passed its "Pearlshell Beche-de-Mer Fishery Act" in 1831 which applies to an area extending in some places as far as 250 miles from the coast.[28]

Western Australia protects its oyster fisheries by a statute passed in 1881, and protects its pearl fisheries by the Pearling Act in 1912. These acts do not set any limit within which the Governor might declare a part of the ocean to be one of the protected "pearl-shell areas".[29]

Jessup in his law of Territorial Waters and Maritime Jurisdiction (1927) at page 16 says:

"Judging from the official map of New

[26]Riesenfeld, "Protection of Coastal Fisheries Under International Law"

[27]Colombos, "International Law of the Sea", 3rd ed., p. 305.

[28]Riesenfeld - p. 170.

[29]Riesenfeld - p. 170; Colombos - p. 307.

Guinea and Papua (at page 969 Official Year Book of the Commonwealth of Australia, No. 15, 1922) the British claim to jurisdiction in these regions is very extensive indeed, being measured by a line drawn frequently more than a 100 miles from shore to embrace the numerous scattered islands. The Queensland Boundary is shown in part as extending more than 100 miles out to sea."[30]

Textwriters as early as 1803 recognized that the coastal states had a claim in the Continental Shelf adjoining their shores. Mouton, in his work "The Continental Shelf", page 33, reviews the statements of various writers on this subject as follows:

"Already in 1803 de Rayneval, p. 161, argued on geological grounds:' . . . le fond de la mer, le long descotes, peut etre considere comme ayant fait partie du continent, et qu'il est cela considere comme en faisant encore partie'. In the Proclamation of President Truman we read in the fourth paragraph:' . . . since the continental shelf may be regarded as an extension of the land-mass of the coastal nation and thus naturally appurtenant to it . . . ' and in the Mexican and Argentine Declarations we find words of the same tenor as in the Peruvian Decree of 1 August, 1947,: . . . ' the continental shelf forms a single morphological and geological unity with the continent'. Yepes, who said in the 67th meeting of the International Law Commission, p. 4: 'The first and most important was the rule of continuity, according to

[30] See also Mouton, "The Continental Shelf", p. 138-143.

which the continental shelf was only the submarine continuation of the territory above water.' And finally Smith, p. 8: 'The shelf is nothing more than an extension of the continent into the sea. It may be argued that this fact alone gives a State paramount right to assert its claim to those resources. It would seem that the principle of propinquity is another way of stating that the geography of the location gives a State a paramount right to such resources.' "

This writer goes on to make the following statement regarding Bottom-Fisheries on page 135 of the above quoted work:

"As far as bottom-fisheries are carried out by trawling, they are linked up with the shelf, as described in Chapter I (the sea-bottom which is not deeper than 100 fathoms), because trawling is mostly carried out up to this depth. * * *

As far as declarations or decrees do claim the seabottom or sea-bed of the continental shelf to belong to the coastal State, or being under the control and jurisdiction of the coastal State, it is obvious that trawling by foreign fishermen on that sea-bed will be objected to.

It would be closing our eyes to reality if we tried to argue that bottom-fish are not fixed to the sea-bed but move freely and only live on or near the sea-bed. The trawlnet scrapes the seabottom very closely. . . . "

Riesenfeld quotes the following statement made in 1803 by de Rayneval in his "Institutions du droit de la Nature et des gens":[31]

[31]Riesenfeld, "Protection of Coastal Fisheries Under International Law", p. 31.

"The sea which washes the shores is deemed to form a part thereof; its safety and tranquillity render this property necessary: the sea must play the part of a bulwark. We could add that the bottom of the sea along the coasts can be considered as having formed a part of the continent and is therefore still considered as forming such part.

But the extent of this property is not determined by a uniform rule. Some fix it at thirty leagues, others only at three; others again fix it at the range of a cannon placed upon the shore. Along the southern coasts of France the distance was ten leagues with regard to the moors."

Proprietary Exercise of fishery rights are enlarged upon in Defendants Appendix B.

3. International Law Has Always Recognized Effective Occupation of the Sea-Bed and Sub-Soil of the Continental Shelf As a Basis of Title in The Coastal State.

The inhabitants of Louisiana living in the coastal area have depended upon trawling, shrimping and oyster fishing for their livelihood ever since the State became populated. The State of Louisiana has enacted laws beginning in 1870 and continuing on down to the present date regulating the cultivation and taking of oysters, fish, trawling and shrimping, and drilling wells for the production of oil, gas and other minerals. (Excerpts from the acts of the Legislature of Louisiana referred to hereafter are contained in Defendants Appendix, Section H.) These Acts of the

Louisiana Legislature usually begin by an assertion that the State of Louisiana owns the beds of the bays and inlets bordering on the Gulf of Mexico and on that part of the Gulf within its jurisdiction not heretofore sold or conveyed by the State. They provide for the leasing of the bed of the Gulf for the taking of oysters and for mineral production. Act 18 of 1870 forbids aliens from fishing or removing oysters from any of the reefs, bays and coasts of the State of Louisiana.

Act 106 of 1886 of the Legislature of Louisiana provides that the bed of the Gulf of Mexico adjoining Louisiana "shall continue and remain the property of the State of Louisiana, and may be used as a common by all the people of the State for the purpose of fishing and of taking and catching oysters and other shellfish, subject to the reservations and restrictions hereinafter imposed." This Act of the Legislature vests authority in the Police Juries of any Parish "in which natural oyster beds are formed and in which there are water beds and water ways suitable for oyster planting and cultivation" to make regulations for the enforcement of the Act. It makes owners and masters of canoes, boats, or vessels registered or licensed under the Act, officers for the purpose of arresting persons who may violate the provisions of the Act.

A reference to Sheets 1115 and 1116 prepared by the United States Coast & Geodetic Survey of the United States—Gulf coast, Mississippi River to Galveston, filed in this Court as an Appendix to this brief, shows the oyster shoals extending beyond the line

adopted by the Legislature of Louisiana as its coast line in Act 33 of 1954. These shoals extend as much as 25 or 30 miles seaward in some places.

In 1896 the Louisiana Legislature adopted Act 121 which embodies many of the provisions of prior Acts on the same subject that were passed in 1886 and in 1892. It contains a provision that "the citizens of this State shall have the exclusive privilege to fish or to take oysters in any natural oyster bed or shoal in its territorial waters in the Gulf of Mexico." Act 144 of 1908 of Louisiana creates a Commission for the Conservation of Natural Resources to cooperate with a similar Commission of the Federal Government in the matter of conservation of natural resources, including the prevention of waste and the extraction of oil, gas and other minerals.

Louisiana Act 189 of 1910 declares that all that part of the Gulf of Mexico within the jurisdiction of the State "including all natural oyster reefs and all oyster and other shell fish growing therein shall be, continue and remain the property of the State of Louisiana." Various Acts of the Louisiana Legislature beginning with Act 245 of 1910 declare that all salt water shrimp found in the waters of the State are property of the State, and regulate the manner in which they shall be taken.

Act 168 of 1912 levies a license on seines used for the taking of shrimp and the license fee is graded to cover seines in excess of 200 fathoms in length. This

Act was amended by Act 193 of 1916 to increase the tax on seines over 300 fathoms in length. The law therefore contemplated the taking of shrimp in the deeper waters lying far offshore in the Gulf of Mexico. Witnesses will testify that the State has regulated shrimping and trawling to the edge of the Continental Shelf.

The Legislature of Louisiana in 1914 passed Act 271 which authorized the Governor to lease the water bottoms of the State "for the development and production of oil, gas, coal, salt, sulphur, lignite, and any other minerals". Other Acts for this purpose were enacted in subsequent years specifically for the purpose of leasing the bed of the Gulf of Mexico. The first lease for this purpose offshore in the Gulf of Mexico was executed by the Governor on January 3, 1920. Subsequent to that date leases have been executed by the State of Louisiana on almost two million acres of land and these leases extend up to 50 miles offshore in the Gulf of Mexico.

Louisiana can show by the testimony of witnesses the extent to which it has exercised jurisdiction over the waters, the sea-bed and the subsoil of the Gulf of Mexico as far as the memory of living witnesses can go. This exercise of jurisdiction has included the greater part of the Continental Shelf, and the United States as well as foreign nation have acquiesced in Louisiana's possession of the Shelf for so long that its claim thereto amounts to undisputed title, that is, until oil was discovered and produced in such large quantities that

the Federal Government devised a method of claiming the Shelf as property affected with "a national interest."

These Acts of Louisiana exercising exclusive jurisdiction over and possession of the sub-soil and sea-bed of the Gulf of Mexico since the admission of the State to the Union in 1812, with the acquiescence of the United States and the family of nations, constitutes a basis of State title and ownership parallel to that of Ceylon, New South Wales, Australia, New Guinea, Ireland and other constituent parts of the British Empire. In this respect the United States is able to assert federal jurisdiction over the Continental Shelf (within the limits of its constitutional powers) not only because of the Louisiana Purchase Treaty but also by means of the ownership acquired by Louisiana through immemorial possession and effective occupation thereof.

Mouton, in his work on "The Continental Shelf", page 153, comments on this subject as follows:

> "As the coastal State acts as proprietor, the question may be asked where this right came from. The Under Secretary of State for the Colonies, answering a question to that effect regarding the chank fisheries of Ceylon, in the British Parliament in 1923, (column 993) said: 'The claim of the Ceylon Government to this fishery is based on immemorial user by successive sovereigns of the island.' ...
>
> As most writers speak of occupation, does

that mean that sedentary fisheries are quite different in character from other fisheries?

Sedentary fisheries, says Fulton, p. 697, 'have always been considered on a different footing from fisheries for floating fish . . . they are looked upon rather as belonging to the soil or bed of the sea than to the sea itself. This is recognized in municipal law, and Internationl Law also recognizes in certain cases a claim to such fisheries when they extend along the soil under the sea beyond the ordinary territorial limit.' "

Comment on this subject is made by Colombos in his "Internationl Law of the Sea", page 306-7, as follows:

"Sir Cecil Hurst, in a remarkable article already referred to, concluded that such claims are valid provided they conform to certain conditions, namely (i) the coastal State must have exercised effective occupation of, and jurisdiction over, the sedentary fisheries on the sea-bed for a long period; (ii) there must be no interference with freedom of navigation in the waters above the sea-bed; and (iii) there must be no interference with the right to catch swimming fish in the waters above the sea-bed. In their comments on the Revised Draft Articles on the continental shelf prepared by the International Law Commission in 1951, the British Government stated that they considered Sir Cecil Hurst's article as correctly stating the law on sedentary fisheries and that they were in entire agreement with the author's conclusion that 'the claim to the exclusive ownership of a portion of the bed of the sea and to the

wealth which it produces in the form of pearl, oysters, chanks, coral, sponges or other fructus of the soil is not inconsistent with the universal right of navigation in the open sea or with the common right of the public to fish in the high seas.' The drafting of article 3 by the International Law Commission seems to be in accordance with the above conclusions. . ."[32]

As this Court said in *Louisiana v. Mississippi*, 202 U. S. 1, 52, 50 L.Ed. 931:

"The maritime belt is that part of the sea which, in contradistinction to the open sea, is under the sway of the riparian states, which can exclusively reserve the fishery within their respective maritime belts for their own citizens, whether fish or pearls, or amber, or other products of the sea. See Manchester v. Massachusetts, 139 US 240, 35 L.Ed. 159, 11 S.Ct. Rep. 559; McCready v. Virginia, 94 US 391, 24 L.Ed. 248."

The Court in this case, in referring to the riparian state's exclusive rights in the sea, was specifically referring to Louisiana — and not the United States. An extension of the maritime belt for any purpose, and particularly with respect to natural resources, would consequently inure to the benefit of this state.

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[32]See also: 2 Hackworth's Digest of International Law 672-680.

F. PRIOR TO THE PRESIDENTIAL PROCLAMATION OF 1945 AND THE SUBMERGED LANDS ACT AND OUTER CONTINENTAL SHELF LANDS ACT OF 1953, THE UNITED STATES HAS CONSISTENTLY APPROVED STATE OWNERSHIP OF A THREE LEAGUE BELT IN THE GULF OF MEXICO

As an alternative to its claim to ownership of the sub-soil and minerals under the entire Continental Shelf-boundaries co-extensive with those of the United States-Louisiana insists that its boundaries must be at least three leagues from its coast in the Gulf of Mexico. (Answer p. 21-24)

The State says that if its southern boundary, the Gulf of Mexico "including all islands within three leagues of the coast", is not a land boundary which includes by necessary implication, and as any attribute of State sovereignty, the historic boundaries of the Territory of Orleans incorporated into the Union as the State of Louisiana, that is, "the seas, ports, bays, and adjacent straits comprised in the extent of said Louisiana . . . along the River Mississippi — as far as its mouth in the sea or Gulf of Mexico about the 27th degree of the elevation of the North Pole", then this southern boundary is a water boundary extending seaward three leagues into the Gulf. The Supreme Court has in fact held that this seaward boundary of Louisiana is a water boundary. (Louisiana v. Mississippi, 202 U.S. 1, 50, 53, 50 L.Ed. 913, 932) Although the United States was not a party to the case just cited, it

is bound by the Court's opinion and decree as to the location of Louisiana's boundary.[33]

Although the Department of State of the United States has on several occasions asserted that three miles is the extreme limit that any nation may claim sovereignty over the adjoining sea, and there are Court decisions which state this to be a rule of international law, accepted by some nations; the so-called rule has been applied only to the Atlantic and Pacific shores of this nation, and it was not an accepted rule in the United States when Louisiana became a State of the Union in 1812. *It is most significant that a three mile limit has never been applied to coastal States bordering on the Gulf of Mexico* by the United States or any other nation.

On the contrary the United States has at all times prior to its claim to the entire Continental Shelf recognized the fact that *sovereignty over the marginal belt in the Gulf of Mexico extends three leagues into the sea*, and has never asserted that State ownership consists of any lesser width or extent in this Gulf.

Treaties and declarations to this effect have been made by the United States over a long period of time, and include among others the following:

Treaty with Spain of February 22, 1819, 8 Stat. 252,

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[33]Florida v. Georgia, 17 How. 478, 15 L.Ed. 181
49 Am. Jur. 247 - Note 6.

Treaty with Mexico of January 12, 1828, 8 Stat. 372,

Resolution of Congress recognizing independence of Texas, March 1, 1837, Cong. Globe, 24th Cong. 2d Sess. 270,

Convention for Marking Boundary Between the U.S. and Texas, April 25, 1838. 4 Miller's Treaties 133, notes pages 135-136,

Joint Resolution of Congress annexing State of Texas, March 1, 1845, 5 Stat. 797,

Treaty of Guadalupe Hidalgo between the United States and Mexico, February 2, 1848, 9 Stat. 922, 923,

Gadsden Treaty with Mexico, December 30, 1853, Cong. Globe, 33rd Cong. 1st Sess. 1568, 10 Stat. 1031.

Act of Congress approving the Constitution of the State of Florida, February 25, 1868, 15 Stat. 73.

The above described treaties with the Republic of Mexico in which the parties agreed that the boundaries of the respective nations extended three leagues into the Gulf of Mexico have been reaffirmed and readopted on numerous occasion, including Boundary Conventions of 1882, 1889, and 1905. Similar recognition of Mexico's three league limit was made in 1936. See Hackworth's Digest of International Law, Vol. 1, page 639-642.

Said treaties and conventions fixing the boundaries of the coastal states in the Gulf of Mexico three

leagues seaward have been accepted by the family of nations and specifically recognized by the great maritime nations of the world since Louisiana was admitted to the Union in 1812.

Spain and the United States fixed their corner at the mouth of the Sabine River in the sea by their Treaty of Limits in 1819. This Treaty was the basis for the fixing of this corner at the mouth of the Sabine "three leagues from land" in the Boundary Convention between the United States and the Republic of Texas in 1838. (See U.S. v. Texas, 162 U.S. 1, 31-32, 40 L.Ed. 867, 876-7)

The notes appended to the convention for marking the boundary between the United States and Texas signed April 25, 1838, 4 Miller's Treaties, pages 135 and 136, show that the earlier treaties made by this nation with Spain and with Mexico constituted the basis for the international boundary extending three leagues into the Gulf of Mexico at the mouth of the Rio Grande.

> "Each of the two Governments from the beginning of their relations regarded the boundary fixed by the earlier treaties of the United States with Spain and with Mexico (Treaties of 1819 and 1828) (Documents 41 and 60) as binding, so far as concerned the line between the United States and the Republic of Texas. The Government of the United States was so informed by the representatives of Texas as early as January 11, 1837 (Garrison, Diplomatic Correspondence of Texas pt. 1, 175); the attitude of that Govern-

ment at no time varied in that regard (ibid., 232, 279, 295); indeed, the Government of Texas appointed a commissioner to run the line accordingly (ibid., 252, August 4, 1837; 279, December 31, 1837). The boundaries of Texas, as claimed by that Government, were thus described in the instructions of March 21, 1838, from R. A. Irion, Secretary of State of Texas, to Memucan Hunt (ibid., 318-20):

> The present boundaries of Texas as fixed by an act of Congress are as follows, viz.—Beginning at the mouth of the Sabine River and running west along the Gulf of Mexico three leagues from land to the mouth of the Rio Grande. . .' "

The idea of a three league belt of territorial waters which appears in all of the earlier negotiations of the United States with Great Britain and France, and which was approved in this nation's treaties with Spain, Mexico and Texas was undoubtedly suggested and influenced by the writings of Georg Friedrich von Martens, who wrote a Latin Treatise on the Law of Nations in 1785. He later published a new work in 1789 in French and a German edition in 1796. The French edition was translated into English by William Cobbett in 1795 and published in Philadelphia. As the translator stated in the second edition, von Martens' work was subscribed for by all members of the Congress of the United States. In that translation the following statement is made:

> "A custom, generally acknowledged, extends the authority of the possessor of the coast to a

cannon shot from the shore; that is to say, three leagues from the shore, and this distance is the least, that a nation ought now to claim, as the extent of its dominions of the seas."

A footnote for Martens' German edition of 1796, page 46, reads as follows:

"Pfeffel in Principles du droit naturel, bk. 3, Chap. iv, sec. 15, indicates the distance of three leagues as the now universal principle. This principal is now incorporated in many treaties even though no cannon reaches that far, especially over the sea.' "

Riesenfeld, in his "Protection of Coastal Fisheries", page 29, says of Martens:

"It is probably no exaggeration to state that G. F. von Martens gave the theory of international law a new direction. He was the great model of all continental writers in the century which followed the appearance of the first French and German edition of his work. Rivier calls him in his well-known 'Esquisse d'une histoire litteraire des gens depuis Grotius jusqu'a nos jours', the true originator of the systematic and scientific study of the positive law of nations."

In the 1802 London edition of Cobbett's English translation the following advertisement is printed (p. v):

"A French copy of this work was received in America in the year 1794. It came into the hands of the government, who, impressed with a high opinion of its utility, were very anxious that

it should obtain a general circulation, for which purpose it was necessary that it should be translated into English, a task which it happened to fall to my lot to discharge. The translation met with great success. The President, the Vice-President, and every member of the Congress became subscribers to it; and, I believe, there are few law-libraries in the United States, in which it is not to be found . . ."

The Treaty of Guadalupe Hidalgo signed on February 2, 1848 describes the boundary line between the United States and Mexico in Article V which reads in part as follows: (9 Stat. 922, 926)

"The boundary line between the two Republics shall commence in the Gulf of Mexico three leagues from land, opposite the Mouth of the Rio Grande."

In the debates in the Senate on the ratification of this Treaty no question was raised as to the validity of that portion of the boundary commencing "in the Gulf of Mexico, three leagues from land." This Treaty was ratified by the Senate on March 10, 1845.

The United States again fixed its boundary with Mexico in the Gadsden Treaty which was concluded on December 30, 1853. Article I of this Treaty provides (10 Stat. 1031):

"The limits between the two Republics shall be as follows:

Beginning in the Gulf of Mexico three leagues from land opposite the Mouth of the Rio Grande,

as provided in the 5th Article of the Treaty of Guadalupe Hidalgo."

The official report of the marking of this boundary prepared for the Department of Interior states:

> "Lt. Wilkinson, in command of the Brig Morris, repaired at the appointed time to the Mouth of the River and made soundings . . . to trace the boundary as the treaty required, 'three leagues out to sea'".[34]

This three league line was surveyed again and agreed upon as the international boundary between the United States and Mexico in 1911. The international boundary line extending three leagues into the Gulf of Mexico is shown on Map Sheets 29 and 30 of "Department of State—Proceedings of the International Boundary Commission United States and Mexico —Joint Report of the Consulting Engineers on Field Operations of 1910-1911. American Section". (Dept. of State, 1913). Defendants Map Appendix contains these map sheets showing this three league International Boundary.

A fairly complete discussion of the establishment of the United States boundary 3 leagues into the Gulf of Mexico can be found in the case of *Amaya v. Stanolind Oil and Gas Company*, 62 Fed Sup. 181, et seq., 158 F. 2d 554.

On August 30, 1935 Mexico amended Section 1 of Article IV of its Law of Immovable Properties of the

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[34] 1 Emory, Report of the United States and Mexican Boundary Survey (Washington, 1857) p. 58.

Nation so as to state that the territorial waters should extend to a distance of nine nautical miles counted from the mark of the lowest tide on the coast of the mainland or on the shores of the islands forming part of the national territory. The Department of State of the United States protested under date of March 7, 1936 and was reminded by the Mexican Foreign Office that the territorial waters of Mexico as well as those of the United States had been fixed by the Treaty of Guadalupe Hidalgo at nine nautical miles. The Department of State reply on May 23, 1936 stated that the *treaty only fixed this as a boundary in the Gulf of Mexico* and that its protest was directed at the extension of the Mexican territorial waters into the Pacific Ocean. In effect the Department of State admitted that the territorial waters of the United States and of Mexico extended three leagues into the Gulf.[35]

The United States was the first nation which officially recognized the independence of the Republic of Texas. In a special message to Congress on December 22, 1836 President Jackson indicated in the following language that the United States in recognizing Texas' independence was also recognizing its territorial claims:

> "The title of Texas to the territory sea claims is identified with her independence."[36]

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[35]1 Hackworth Digest of International Law 639-641.

[36]Congressional Globe, 24th Cong. 2nd Sess. 45.

United States Senate on March 1, 1837 adopted a Resolution recognizing the independence of Texas.[37] Senator Walker, the author of the Resolution, in a speech in the Senate on May 21, 1844, said:

> "As the author of the Resolution, before it was adopted, I read to the Senate the Boundaries of Texas, as described in her Organic Law, claiming it also *as the ancient boundaries of Louisiana;* and with the full knowledge of these facts, the Resolution was adopted." (See App. Cong. Globe 28 Cong. 1st Sess 549)

On September 25, 1839, the Treaty of Amity Commerce and Navigation was made between the Republic of Texas and France in which the territorial claims of Texas were recognized. A similar treaty was made by Texas with the Netherlands on September 18, 1840, and on November 13, 1840 such a treaty was concluded between Texas and Great Britain.[38]

It would therefore appear that as a matter of international law a boundary not less than three leagues in the Gulf of Mexico was recognized in the family of nations during the early part of the 19th Century. Apparently no objection has been offered with respect to the three league claim of Texas in the Gulf of Mexico, nor was any objection offered by any nation when Florida's boundaries were declared to be five leagues in the Gulf of Mexico in its Constitution of 1868, which

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[37]Congressional Globe, 24th Cong. 2nd Sess. 270.

[38]2 Gammel's Laws of Texas 655, 880, 905.

limit was subsequently reduced to three leagues in the Florida Constitution of 1885.[39] The Florida Constitution of 1868 was approved by United States Congress.[40]

If the boundary between the United States and Spain in 1819, between the United States and Mexico in 1828, and between the United States and Texas in 1838, was three leagues offshore in the Gulf of Mexico and if the boundary of the United States with Mexico was fixed three leagues in the Gulf by various Treaties since, is it reasonable to say that on these dates, or subsequently, the southwest corner of Louisiana was less than three leagues offshore? It would therefore follow that these boundary agreements with Spain, Mexico and Texas explain the meaning of the Act of Admission of Louisiana to the Union wherein its boundary on the Gulf includes "all islands within three leagues of the coast".

1. Equality and Uniformity Require that Louisiana's Boundary in the Gulf of Mexico Be No Less Extensive Than Those of Other Gulf Coastal States.

In the 1950 Tidelands decision, *United States v. Texas*, 339 U. S. 707, 715-716, 94 L.Ed. 1221, 1226 the Supreme Court ruled that the State of Texas owned nothing beyond low-water mark in the Gulf of Mexico although the Treaty of Annexation whereby Texas joined the Union obligated the United States to recog-

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[39] Thorpe's American Charters, Constitutions and Organic Laws, Vol. 2, p. 706, 734.

[40] 15 Stat. 73.

nize its three league boundary into the Sea. The Court justified this conclusion by saying:

> "We are of the view that the 'equal footing' clause of the Joint Resolution annexing Texas to the Union disposes of the present phase of the controversy.
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> The 'equal footing' clause has long been held to refer to political rights and to sovereignty. See Stearns v. Minnesota, 179 US 223, 245. It does not, of course, include economic stature or standing. There has never been equality among the States in that sense. * * * The requirement of equal footing was designed not to wipe out those diversities but to create parity as respects political standing and sovereignty.
>
> *Yet the 'equal footing' clause has long been held to have a direct effect on certain property rights.*
>
> . . . The 'equal footing' clause prevents extension of the sovereignty of a State into a domain of political and sovereign power of the United States from which the other States have been excluded, just as it prevents a contraction of sovereignty (Pollard's Lessee v. Hagan, supra) which would produce inequality among the States. For equality of States means that they are not 'less or greater, or different in dignity or power.' See Coyle v. Oklahoma, 221 US 559, 566."

So the equality rule works in reverse here. If Texas and Florida are to have boundaries extending three leagues into the Gulf then the other Gulf coastal

states including Louisiana must be placed on the same "equal footing". If the United States can recognize a three league limit for Mexico, Texas and Florida whose coast lines include more than 80 per cent of the Gulf's perimeter, it can hardly be considered equal treatment for Louisiana to be limited to three miles.

The Submerged Lands Act uniformly recognizes the principle that "in different seas and on different coasts, a wider or more contracted range in which to exercise the vigilance of the government, will be assented to".[41] In accordance with the authority just quoted, the Submerged Lands Act makes a classification, or grouping of States, which relates to the seas upon which their coasts are located. On strictly inland seas, such as the Great Lakes, a wide marginal belt is recognized, whereas on the greatest of all international highways, the Atlantic and Pacific Oceans, where international conflicts are most likely to occur, the most restricted belts are located.

Thus the Act provides that all states bordering the Great Lakes may extend their boundaries to the International Boundary that runs down the middle of these inland seas. Lake Huron has an average width of 155 miles, so the States bordering on Lake Huron extend seaward an average of more than 77 miles. The Submerged Lands Act uniformly provides a seaward limit of three miles for all States bordering on the At-

[41] Church v. Hubbart, 2 Cranch 187, 234-5, 2 L.Ed. 249,

lantic and the Pacific Oceans. It sets a limit of three leagues in the Gulf of Mexico. Louisiana is entitled to at least that much.

G. THE UNITED STATES HAS RECOGNIZED A THREE LEAGUE MARGINAL BELT

In the California Case (332 U. S. 19, 32) the opinion states that "when this nation was formed, the idea of a three mile belt over which a littoral nation could exercise rights of ownership was but a nebulous suggestion." This is a correct statement in so far as the so-called three mile rule is concerned, because this idea did not take definite form until sometime later in the 19th century. However, all the text writers on International Law and all of the treaties defining territorial limits on the American Continent have recognized State sovereignty over submerged lands in the sea, but at greater distances from the shores or the coasts than three miles.

Thus the Continental Congress authorized the capture of any ship carrying British goods "if found within three leagues of the coasts."[42]

In August of 1779 the Continental Congress passed a Resolution relating to negotiations for peace with Great Britain. A paragraph of this Resolution is quoted from the Journals of the Continental Congress, Volume XIV, 1779, page 922:

"RESOLVED, that the faith of Congress be

[42]Journal of the Continental Congress, 1781, pages 185, 186, 187.

pledged to the several states that without their unanimous consent, no treaty of commerce shall be entered into, nor any trade or commerce whatsoever carried on with Great Britain, without an explicit stipulation on her part not to molest or disturb the inhabitants of the United States of America in taking fish on the banks of Newfoundland and other fisheries in the American seas anywhere, excepting within the distance of three leagues of the shores of the territories remaining to Great Britain at the close of the war, if a nearer distance cannot be obtained by negotiation."

In the records of the Continental Congress of August, 1782, the instructions to the United States Ministers are recorded regarding the position to be taken by the United States in negotiations for the Peace Treaties which were to be considered between this nation, Great Britain and France. The following statement appears in those instructions:

"Another claim is the common right of the United States to take fish in the North American seas, and particularly on the Banks of Newfoundland. With respect to this object, the said ministers are instructed to consider and contend for it, as described in the instructions relative to a treaty of commerce, given to John Adams on the 29th of September, 1779. They are also instructed to observe to his most Christian Majesty, with respect to this claim, that it does not extend to any parts of the sea lying within three leagues of the shores held by Great Britian or any other nation. That, under this limitation, it is conceived by Congress a common right of taking fish cannot be denied

to them without a manifest violation of the freedom of the seas, as established by the law of nations and the dictates of reason; according to both which the use of the sea, except such parts thereof as lies in the vicinity of the shore and are deemed appurtenant thereto, is common to all nations, those only excepted who have either by positive convention, or by long and silent acquiescence under exclusion, renounced that common right; that neither of these exceptions militate against the claim of the United States, since it does not extend to the vicinity of the shore, and since they are so far from having either expressly or tacitly renounced their right, that they were prior to the war, though indeed not in the character of an independent nation, in the constant, and even during the war, in the occasional exercise of it; that although a greater space than three leagues has in some instances been, both by public treaties and by custom, annexed to the shore as part of the same dominion, yet, as it is the present aim of the maritime Powers to circumscribe, as far as reason will justify, all exclusive pretensions to the sea, and as that is the distance specified in a treaty to which both Great Britain and his Majesty are parties, and which relates to the very object in question, it was supposed that no other distance could, in the present case, be more properly assumed; that if a greater or an indefinite distance should be alleged to be appurtenant by the law of nations to the shore, it may be answered that the fisheries in question, even those on the Banks of Newfoundland, being of so vast an extent, might with much greater reason be deemed appurtenant to the

whole continent of North America than to the inconsiderable portion of it held by Great Britain. . ."[43]

When the United States was negotiating for its treaty of independence with Great Britain in 1783 Congress instructed the negotiators to require an explicit recognition of American fishing rights in the American seas "excepting within the distance of three leagues of the Shores of the Territory remaining to Great Britain at the close of the war, if a nearer distance cannot be obtained by negotiation."[44] The American negotiators, however, through their skillful diplomacy succeeded in obtaining for the United States fishing privileges in all waters belonging to Great Britain on the Canadian coast when the Peace Treaty of September 3, 1783 was concluded (See Article III). Comment upon this subject was made by President Madison to Mr. Adams by a letter addressed to the latter on December 17, 1814, in which the President said:

"It appears from one of your letters . . . that the original views of Congress did not carry their

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[43]Crocker, "The Extent of the Marginal Seas", p. 630. American State Papers, 2nd Series, Vol. 6, pages 871-873.

[44]Journals of the Continental Congress, Vols. 13 and 14, reprinted in proceedings in the North Atlantic Coast Fisheries Arbitration, Vol. 7, App. p. 38.

See also the letter of Mr. Adams to Mr. Livingston of February 5, 1783, reprinted in the Appendix to these proceedings at page 190.

ultimatum beyond the common right to fish in waters distant 3 leagues from the Britist shores. The negotiations, therefore, and not the instructions . . . have the merit of the terms actually obtained."[45]

In 1793 Secretary of State Jefferson, in letters written to the diplomatic representatives of France and Great Britain, stated that one sea league was the smallest limit of territorial waters which had been recognized and that the character of the American coast would entitle us to a broader margin of protected navigation. In this letter he wrote:

"You are sensible that very different opinions and claims have been heretofore advanced on this subject. The greatest distance to which any respectable assent among nations has been at any time given, has been the extent of the human sight, estimated at upwards of 20 miles, and the smallest distance I believe, claimed by any nation whatever is the utmost range of a cannon ball, usually stated at one sea league. Some intermediate distances have also been insisted on, and that of three sea leagues has some authority in its favor. The character of our coast, remarkable in considerable parts of it for admitting no vessels of size to pass near the shores, would entitle us in reason to as broad a margin of protected navigation as any nation whatever. Reserving however the ultimate extent of this for future deliberation the President gives instructions to

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[45] Appendix Volume 7, p. 226, Proceedings in the North Atlantic Coast Fisheries Arbitration.

the officers acting under his authority to consider those heretofore given them as restrained for the present to the distance of one sea league or three geographical miles from the sea shores."[46]

An Act of Congress of February 18, 1793 for enrolling and licensing fishing vessels established jurisdiction over such licensed ships within three leagues.[47]

On May 15, 1793 Thomas Jefferson as Secretary of State forwarded to the French Minister an opinion on the seizure of the ship "Grange" in which the Attorney General stated:

> "The necessary or natural law of nations. . . will, perhaps, when combined with the Treaty of Paris in 1783 justify us in attaching to our coasts an extent into the sea beyond the reach of cannon shot."[48]

In a note of May 17, 1800 Secretary of State Madison suggested negotiations with Great Britain for an agreement restraining captures "within the distance of four leagues from the shore", and "if the dis-

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[46]Letter from Mr. Jefferson (U. S. Secretary of State) to to Mr. Genet (Minister of France) of November 8, 1793, reprinted in Proceedings in the North Atlantic Coast Fisheries Arbitration, Vol. 4, App. p. 96

Letter from Mr. Jefferson (U. S. Secretary of State) to Mr. Hammond (British Minister at Philadelphia) of November 8, 1793, reprinted ibid, Vol 4, App. p. 97.

[47]1 Stat. 305, 314.

[48]American State Papers, Class I, Foreign Relations, Vol. 1, p. 147.

tance of four leagues cannot be obtained, any distance not less than one sea league may be substituted."[49] This language was repeated in his instructions of May 17, 1806.[50]

On November 30, 1805 President Jefferson stated that assent was given to a limit of 3 miles in 1793 because "we were not then prepared to assert the claim of jurisdiction to the extent we are in reason entitled to" and that the matter had been reserved "for future consideration."

On December 3, 1805 Thomas Jefferson in his 5th annual message to Congress made the following report:

> "Since our last meeting the aspect of our foreign relations has considerably changed. Our coasts have been infested and our harbours watched by private armed vessels, some of them without Commissions, some with illegal commission, others with those of legal form, but committing piratical acts beyond the authority of their commission. They have captured in the very entrance of our harbours, as well as in the high seas, not only the vessels of our friends coming to trade with us, but our own also . . . I found it necessary to equip a force to cruise within our own seas, to arrest all vessels of these descriptions found hovering on our coasts within the limits of the Gulf

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[49]Crocker, "The Extent of the Marginal Seas," p. 639.

[50]3 American State Papers, p. 122.

Stream and to bring the offenders in for trial as pirates.

The same system of hovering on our coasts and harbours under color of seeking enemies has also been carried on by public armed ships to the great annoyance and oppression of our commerce. New principles too have been interpreted into the law of nations, founded neither in Justice nor the usage or acknowledgement of nations. According to these a belligerent takes to itself a commerce with its own enemy which it denies to a neutral on the ground of its aiding that enemy in the war; . . ."[51]

The foregoing message had particular reference to some incidents which had occurred off the coast of South Carolina. The map of the Gulf of Mexico which is contained in the map appendix filed with this brief shows that the Gulf stream off the coast of South Carolina begins at a distance of approximately 90 miles offshore from the southern boundary of this State and extends approximately 150 miles offshore at the northern boundary. The distance offshore increases as the Gulf stream proceeds northeasterly across the Atlantic Ocean.

The attitude of the United States toward a limitation of its maritime belt is discussed in Kent's Com-

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[51] "Abridgment of the Debates of Congress" (1857) Vol. III p. 246

Messages and Papers of the Presidents, Vol. 1, p. 483-4.

mentaries (12th Ed) Vol. 1, pages 30, 31, as follows:

" . . . (c) The executive authority of this country, in 1793, considered the whole of Delaware Bay to be within our territorial jurisdiction; and it rested its claims upon those authorities which admit that gulfs, channels, and arms of the sea, belong to the people with whose lands they are encompassed. It was intimated that the law of nations would justify the United States in attaching to their coasts an extent into the sea beyond the reach of cannon-shot.

Considering the great extent of the line of the American coasts, we have a right to claim, for fiscal and defensive regulations, a liberal extension of maritime jurisdiction; and it would not be unreasonable, as I apprehend, to assume, for domestic purposes connected with our safety and welfare, the control of the waters on our coasts, though included within lines stretching from quite distant headlands, as, for instance, from Cape Ann to Cape Cod, and from Nantucket to Montauk Point, and from that point to the capes of the Delaware, and from the south cape of Florida to the Mississippi . . . In 1793, our government thought they were entitled, in reason, to as broad a margin of protected navigation as any nation whatever, though at that time they did not positively insist beyond the distance of a marine league from the sea-shores; (a) and, in 1806, our government thought it would not be unreasonable, considering the extent of the United States, the shoalness of their coast, and the natural indication furnished by the well-defined path of the Gulf stream, to expect an immunity from bellig-

erent warfare, for the space between that limit and the American shore. It ought, at least, to be insisted, that the extent of the neutral immunity should correspond with the claims maintained by Great Britain around her own territory, and that no belligerent right should be exercised within the chambers formed by headlands, or anywhere at sea within the distance of four leagues, or from a straight line from one headland to another."

The same author discusses both the British and the American Acts regarding the interception of foreign goods within 4 leagues of the coast on page 32 as follows:

. . . "The statute 9 Geo. II. c. 35, prohibited foreign goods to be transshipped within four leagues of the coast without payment of duties; and the act of Congress of March 2d, 1799, c. 128, sec. 25, 26, 27, 99, contained the same prohibition; and the exercise of jurisdiction, to that distance, for the safety and protection of the revenue laws, was declared by the Supreme Court in Church v. Hubbart, (d) to be conformable to the laws and usages of nations."

Toward the middle of the 19th Century as the United States and Great Britain increased in naval power they agreed in some instances to a limitation of territorial waters to three marine miles, but this limit was not uniformly applied. As shown in a proceeding section of this brief the United States has consistently recognized a three league limit in the Gulf of Mexico until the year 1945 when the President proclaimed that the entire Continental Shelf on all the

coasts of the United States appertained to the coastal states and was subject to the jurisdiction and control of the United States insofar as the seabed, subsoil, and the natural resources of the Shelf were concerned.

H. LOUISIANA ACT 33 OF 1954 DEFINES THE STATE'S COAST LINE IN ACCORDANCE WITH APPLICABLE ACTS OF CONGRESS

1. The Louisiana Coast Has Been Defined Pursuant to Acts of Congress As the Line Dividing Inland Waters From the Open Sea.

In the event that the Court should hold that the United States owns a belt of land surrounding the territory of the coastal States wherein the States own no proprietary rights, and refuses to sustain Louisiana's claim set forth hereinabove, then, pleading in the alternative, Louisiana shows that Act 33 of 1954 passed by its Legislature correctly designates the State's coast line in accordance with applicable Acts of Congress. In its third defense (Answer p. 17, et seq) Louisiana says that its boundaries extend to a line three leagues seaward of the line of demarcation between its inland waters and the open sea, said line having been established by the Act of Congress of February 19, 1895 as hereinafter shown.

By Act of Congress, approved February 10, 1807 by Thomas Jefferson as President, the Chief Executive of the United States was authorized and requested to cause a survey to be made of the coasts of the United

States within twenty leagues of any part of the *shores* of the United States.

The Act of Congress of April 8, 1812 admitting Louisiana to the Union described its southeasterly and southern limits as "the Gulf of Mexico" including all islands within three leagues of the *coast*." (2 Stat. 701, 702).

When Congress defined Louisiana's boundary in the Act of its admission into the Union as being three leagues from coast, into the Gulf of Mexico, Congress must be taken to have intended that the three league boundary line into the Gulf was from the coast line to be designated and defined by the agency of the federal government provided by said Act of Congress of February 10, 1807.

By Section 2 of the Act approved February 19, 1895[52] Congress provided authority in the Secretary of Commerce to designate and define "the line dividing the high seas from rivers, harbors, and inland waters."

In 1896 the Supreme Court held, that pursuant to the authority of the 1895 Act of Congress, the Secretary of Commerce by Department Circular 95 on May 10, 1895, "designated and defined the dividing line between the high seas and the rivers, harbors and inland waters of New York", and that the waters inside of that coast were "as much a part of the inland

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[52]28 Stat. 672, 33 U.S.C. 1351.

waters of the United States within the meaning of this Act as the harbor within the entrance" to the New York Harbor.[53]

This refutes the contention made by some that the coast line fixed under these Acts of Congress is for navigation purposes only. Fact is, the inland rules of navigation apply to navigation over inland waters because of the character of said waters as "inland waters." But, said waters are not "inland" because inland rules of navigation apply thereupon.

In 1946, Congress, by Sec. 101 of Reorganization Plan No. 3 (11 F. R. 7875), vested authority in the Commandant of the Coast Guard to designate and define the coast line under Sec. 2 of the Act of February 19, 1895.

By virtue of this authority the Commandant of the Coast Guard promulgated existing regulations that had been adopted by his predecessors under said Act "to establish the lines dividing the high seas from the rivers, harbors, and inland waters in accordance with the intent of the statute and to obtain its correct and uniform administration."

The regulations fix the *Boundary Lines of Inland Waters*, and provide that the waters inshore of the lines described are "inland waters" and the waters outside of the lines described are the high seas. CG-

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[53]The Delaware, 161 U.S. 459, 463, 40 L.Ed. 771, 773.

169, March 1, 1955, Part 82-Boundary Lines of Inland Water, Sec. 82.1.

Sec. 82.95 and 82.103 designate and define the coast line or outer boundary of the inland waters from Mobile, Alabama to Sabine Pass, Texas. These regulations define the inland waters as they had been marked and surveyed during the 19th Century as required by the Acts of Congress referred to above.

This coast line, including that of the State of Louisiana, is shown on a map prepared by the Commandant of the Coast Guard, and this coast line, so designated and defined in accordance with applicable Acts of Congress, was accepted and approved by the Louisiana Legislature by Act No. 33 of 1954, as follows:

> "From Ship Island Lighthouse to Chandeleur Lighthouse; thence in a curved line following the general trend of the seaward, high-water shore lines of the Chandeleur Islands to the Southwestern most extermity of Errol Shoal; thence to Pass-a-Loutre Lighted Whistle Buoy 4 to South Pass Lighted Whistle Buoy 2; thence to Southwest Pass entrance Midchannel Lighted Whistle Buoy; thence to Ship Shoal Lighthouse; thence to Calcasieu Pass Lighted Whistle Buoy 1; thence to Sabine Pass Lighted Whistle Buoy 1."

These boundaries are shown on a map attached to and made a part of the 1954 Act of the Louisiana Legislature, and also appear on U.S. Coast and Geodetic Survey Charts 1115 and 1116 (See Map Appendix hereto).

Under specific provisions of the 1807 and 1895

Acts of Congress as amended, and the decisions of the Supreme Court, all of the waters inside of said coast line, therefore, are "as much a part of the inland waters" within the meaning of the Act as the New Orleans harbor.

By said Act 33 of 1954, Louisiana's historic gulfward boundary was simply restated as extending a a distance into the Gulf of Mexico 3 marine leagues from said coast line.

Attention is directed to the fact that the Submerged Lands Act of May 22, 1953 recognized State ownership and quit claimed whatever right, title and interest which the United States had, if any, in and to all lands beneath navigable waters and natural resources within the seaward boundaries of a State in the Gulf of Mexico as they existed at the time such State became a member of the Union, but in no event, (Section 2b) "Shall the term 'boundaries' or the term 'lands' beneath navigable waters' be interpreted as extending from the coast line * * * more than three marine leagues into the Gulf of Mexico."

That provision "three marine leagues into the Gulf of Mexico" from the coast line applies specifically to the State of Louisiana because it is only the State of Louisiana which has a boundary *three leagues from coast* into the Gulf as existed at the time it became a member of the Union. Act of Congress approved April 8, 1812, 2 Stat. 701, 702.

The other Gulf coastal States are Texas, Mississippi, Alabama and Florida.

The Texas boundary is " . . . *three leagues from*

land" into the Gulf of Mexico. Act of December 19, 1836 by the Congress of the Republic of Texas.

The Mississippi boundary is "*. . . six leagues of the shore*" into the Gulf of Mexico, as defined by the Act of Congress of March 1, 1817.

The Alabama boundary is "*6 leagues of the shore*" into the Gulf of Mexico, as defined in the Acts of Congress of March 3, 1817, and March 2, 1819.

The Florida boundary is "*. . . five leagues from the shore*" into the Gulf of Mexico as fixed by its 1868 Constitution, accepted by Congress when reinstating the State of Florida.

Therefore, the fact that the 1953 Submerged Lands Act of Congress recognized and established title to the Gulf coastal states within a maximum distance of *three leagues from coast* into the Gulf of Mexico and that Louisiana is the only State which has a gulfward boundary *three leagues from coast* leaves only one conclusion: that provision is particularly applicable to the State of Louisiana.

The coast line adopted by the 1954 Act of the Louisiana Legislature is in accord with the Submerged Lands Act which thus defines "coast line":[54]

> "The term 'coast line' means the line of ordinary low-water along that portion of the coast which is in direct contact with the open sea and

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[54]Title I Sec. 2 (c), 67 Stat. 29, 43 U.S.C. 1301 (b).

the line marking the seaward limit of inland waters."

The Act of February 19, 1895[55] authorized and directed the establishment of the "lines dividing the high seas from rivers, harbors and inland waters" and this line, as above described has accordingly been adopted by the Legislature in 1954 as its "coast line".

Further support for the adoption of this line as Louisiana's coast line is found in a Congressional Act of July 17, 1939[56] which declared that "the term 'high seas' means all waters outside the line dividing the inland waters from the high seas, as defined in Section 151 of Title 33" (the Act of February 19, 1895).

The Supreme Court interpreting an Act of March 12, 1863 relating to captured and abandoned property has defined "Inland Waters" to apply to "all waters of the United States upon which a naval vessel could go, other than bays, and harbors on the sea coast."[57]

Because of the unusually shallow depth of the waters of the Gulf along the extent of Louisiana's seacoast, and the existence of many shoals[58] and reefs

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[55]28 Stat. 672, Sec. 2, 33 U.S.C. 151.

[56]53 Stat. 1049, 46 U.S.C. 224 a (2).

[57]U. S. v. The Steam Vessels of War, 106 U.S. 607, 612, 27 L.Ed. 286, 287.

[58]A shoal or reef is defined as a part of the seabed "which comes within 6 fathoms of the surface, and so may constitute a danger to shipping." Encyclopaedia Britannica (1945 ed.) Vol. 16 p. 682.

it is not possible for sea going vessels to sail inland of the line dividing the high seas from the inland waters. This line, as fixed by the United States, traverses for the most part waters less than 6 fathoms in depth—in some instances less than 3 fathoms.

U. S. C. & G. S. Charts 1115 and 1116 contained in Defendants Map Appendix show water depths.

2. Louisiana's Coast Line and Seaward Boundary Adopted By the Legislature Accomplishes Stability and Certainty of Location

In another part of this brief relating to Louisiana's historic boundaries we called attention to a statement by a French authority on International Law, Valin, wherein he stated that "it would have been better, perhaps, to reckon the domain over the adjacent sea by the sounding lead, and to assign its limits exactly at that point where the sounding lead ceased to fetch bottom" than to measure the territorial waters as far as can be seen from the shore.

In view of the tortuous nature of Louisiana's shore line, the continuous changes that occur as a result of accretion and erosion, subsidence of land masses, and sudden changes caused by storms and hurricanes, there can be no certainty as to the location of any line along the shores of the State from year to year or even from day to day. There is a constant accretion of land in some segments and erosion of the shore in other segments. Some of these changes have occured gradually, others have occurred rapidly. Storms and hurricanes

have shifted the shore line and changed the shape of islands overnight. In a region such as this where oil and mineral exploration and development are being conducted on a grand scale, the base line for the measurement of a marginal belt cannot be a line whose location is constantly shifting. The coast line fixed by the Louisiana Legislature in accordance with the Acts of Congress, as the line dividing the inland waters from the open sea does not have this infirmity or uncertainty of location.

The "coast line of the United States" has always been measured along this line dividing the inland waters from the open sea. See: "The Public Domain" (1884), by Thomas Donaldson, printed by the Government Printing Office pursuant to Acts of Congress of March 3, 1789 and June 16, 1880, page 464, and U. S. C. & G. S. Charts 1115 and 1116 of the Gulf of Mexico in the Map Appendix to this brief.

This Court has, in at least two decisions, recognized the fact that Louisiana's coast line is a water boundary. In *Queyrouze v. U. S.*, 70 U. S. (3 Wall.) 83, 18 L.Ed. 65, the Court made mention of the fact that Ship Shoal Lighthouse is on the coast of Louisiana. This lighthouse is one of the markers "designating the lines dividing the high seas from the . . . inland waters" in accordance with the requirements of the Act of Congress of February 19, 1895, supra. In the *Queyrouze Case*, which is also entitled "The Jose

phine", the following statement is made regarding the locale of the controversy:

> "The schooner Josephine, laden with a cargo of three hundred and twenty-two bales of cotton and a lot of slaves, was captured by the United States ship of war Hatteras, George F. Emmons, Esq., captain, on the high seas, off Ship Shoal Lighthouse on the coast of Louisiana on the 28th of July, 1862 . . ."

In Mr. Chief Justice Chase's opinion he stated that the steamer Josephine "must have been coming from some point west of Ship Shoal Lighthouse, which is laid down on the coast Survey Charts as more than a 100 miles west of the Mouths of the Mississippi".

In the case of *Louisiana v. Mississippi*, 202 U. S. 1, 43, 50 L.Ed. 913, 928, the Court after quoting the enabling Act of Congress for the creation of the State of Louisiana (Act of February 20, 1811, 2 Stat. 641), declared that Louisiana's boundary on the east and south is a water boundary following the deep water sailing channel in the open sea or Gulf of Mexico. The Court said:

> "The eastern boundary thus described is a water boundary, and, in extending this water boundary to the open sea or Gulf of Mexico, we think it included the Rigolets and the deep-water sailing channel line to get around to the westward. A little over one year later Louisiana was created a state by the act of Congress of April 8, 1812, with this identical eastern boundary line;

and the addition of territory by the Act of April 14, 1812 did not affect the deep water sailing channel line as a boundary."

Earlier in its opinion (202 U. S. 36, 50 L.Ed. 925) the Court referred to maps and diagrams which are made a part of the opinion and stated:

"Map or diagram No. 1, given in the opening statement, shows the limits as thus defined.

By an act of Congress approved April 14, 1812 (2 Stat at L. 708, chap. 7), additional territory was added to the State of Louisiana. This added territory is shown on map or diagram No. 2."

These diagrams very closely follow the deep sailing channel where the markers, buoys and lighthouses were placed to establish the dividing line between the inland waters of Louisiana and the open sea.

In 1938 the Legislature of Louisiana by Act 55 declared the boundaries of the State to be 27 miles seaward of its shore line. This boundary was then considered to be co-extensive with the boundaries of the United States under the theory that this nation had adopted the "cannon shot" rule fathered by the great Dutchman, Bynkersholk, at the beginning of the 18th Century. During the 19th Century this cannon shot rule developed into the so-called 3 mile rule because that was the limit of the range of cannon that could protect the marginal sea from hostile invasion. Since in 1938 our seacoast batteries had a maximum ef-

fective range of 27 miles, our legislature extended the boundaries of Louisiana to what it then believed to be the full-limit permitted by International Law.

In Louisiana's original Tidelands Case decided in 1950 (339 U. S. 699, 94 L.Ed. 1216), the Supreme Court, in commenting on Act 55 of 1938, stated that "Louisiana's enlargement of her boundary emphasizes the strength of the claim of the United States to this part of the ocean and the resources of the soil under that area, including oil." This is a correct statement to the extent that it recognizes the right of the coastal states thus to declare their boundaries as a matter of International Law, and to the extent that it emphasizes the right of the United States to extend its appropriate national jurisdiction and its federal powers enumerated in the Constitution to the full limit of the boundaries of the several states of the Union. This statement by the Court directly implies that the boundaries of the United States and of Louisiana must be co-extensive.

The United States takes the position, in its motion for judgment and in its opposition to Louisiana's motion to take depositions, that the boundaries of the State and of the nation are co-terminous; Louisiana agrees with that position.

I. LOUISIANA IS ENTITLED TO FURNISH EVIDENCE IN SUPPORT OF ITS PLEAS OF ACQUIESCENCE, ESTOPPEL AND PRESCRIPTION

1. Many Equities Are Involved in This Controversy. The United States Is Subject to the Same Rules of Justice and Equity Applicable to Other Litigants.

Louisiana since her admission into the Union has at all times, and with the acquiescence of the United States, exercised governmental and proprietary rights in its Continental Shelf. Evidence on this subject will be offered by the State in the form of numerous maps, charts, records of the State Land Office, State Department of Conservation, State Mineral Board, and by the records of other State offices, and by the oral testimony of witnesses. These are facts which require a hearing since the Court will not take judical notice thereof.

There are many equities involved in this controversy, and of course, the United States is subject to the same rules of justice and equity which are applicable to other litigants. [59]

Although this Court overruled pleas of prescrip-

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[59] Guaranty Trust Co. v. U. S., 304 U.S. 126, 82 L.Ed. 1224;
Lukenbach v. The Thekla, 266 U.S. 328, 69 L.Ed. 313;
U. S. v. Chaves, 159 U.S. 452, 464, 40 L.Ed. 215, 220;
Carr v. U. S., 98 U.S. 433, 25 L.Ed. 209;
Cooke v. U. S., 91 U.S. 389, 398, 23 L.Ed. 237, 243;
The Siren v. U. S., 7 Wall. 152, 19 L.Ed. 129;
Brent v. Bank, 10 Pet. 596, 614, 9 L.Ed. 547, 555;
U. S. v. Barker, 12 Wheat. 559, 6 L.Ed. 728.

tion, acquiescence and estoppel in the California case the committees of Congress questioned the justice of this ruling, saying:[60]

> "That effect of this ruling of the Court is to place the State of California in the same legal position as an individual, thereby depriving it of its status as a sovereign. It should be noted that the case of U.S. v. California was a controversy between two sovereigns, namely, the United States on the one hand and the State of California on the other, both of which occupied equal dignity as sovereigns. The sovereign rights enjoyed by the United States were in the first instance derived from the States and the sovereign powers of the United States can rise no higher or have any greater effect than that which was delegated to the Central Government by the Constitution. The committee believes that, as a matter of policy in this instance, the same equitable principles and high standards that apply between individuals, should be applied by Congress as between the National Government and the sovereign States. (See Indiana v. Kentucky, 136 US 479, 500, 10 S. Ct. 1051 (1890); U.S. v. Texas, 162 US 1, 61, 16 S. Ct. 725 (1896); New Mexico v. Texas, 275 US 279, 48 S.Ct. 126 (1927).

The statement of the Congressional Committees that the State should be treated as an equal sovereign entity in matters of this kind is supported by many

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[60]Senate Rep. No. 133, 83rd Cong. 1st Sess. p. 67. House Rep. No. 215, 83rd Cong. 1st Sess. p. 46.

opinions and rulings of this Court. The following excerpt from the opinion in *Texas v. White*, 75 U. S. (7 Wall) 700, 725, 19 L.Ed. 227, 237 is pertinent here:

> "Not only, therefore, can there be no loss of separate and independent antonomy to the States, through their union under the Constitution, but it may be not unreasonably said that the preservation of the States, and the maintenance of their governments, are as much within the design and care of the Constitution as the preservation of the Union and the maintenance of the National Government."

Another equally compelling conclusion on this subject appears in the following excerpt from the opinion in *Wheeler v. Smith*, 50 U. S. (9 How.) 55, 78, 13, L.Ed. 44, 54:

> "When this country achieved its independence, the prerogatives of the crown devolved upon the people of the States. And this power still remains with them, except so far as they have delegated a portion of it to the federal government. The sovereign will is made known to us by legislative enactment. And to this we must look in our judicial action, instead of the prerogatives of the crown. The State, as a sovereign, is the parens patriae."

Later authorities which support the conclusions of the Congressional Committees that "the same equitable principles and high standards that apply between individuals, should be applied . . . between the Nation-

al Government and the sovereign States" are cited in the footnote below,[61] and in cases later referred to herein.

2. This Court Has Applied Long Possession and Acquiescence as Supporting Title in Actions Involving the United States as a Litigant.

This sovereignty of the State is not lost or diminished whenever a conflicting claim arises between it and the national sovereign. Presumptions of title are indulged in such a case from long continued possession and acquiescence. This is well illustrated by the Court's ruling in *New Orleans v. U.S.*, 10 Pet. 662, 722, 736-7, 9 L.Ed. 573, 596, 602 where title to a public place was conclusively presumed as belonging to a State subdivision as against the United States. The following excerpts from the opinion are pertinent:

> "The public use of this common for so great a number of years, and the general recognition of it from the time it was dedicated, in numerous private and official transactions, and the acquiescense of the French king, offered no unsatisfactory evidence of right. If a grant from the king

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[61] Re Heff, 197 U.S. 488, 505, 49 L.Ed. 848, 855
The Abby Dodge v. U. S., 223 U.S. 166, 173, 56 L.Ed. 390, 392
Osborn v. Ozlin, 310 U.S. 53, 62, 84 L.Ed. 1074, 1079
Skiriotes v. Florida, 313 U.S. 69, 77, 85 L.Ed. 1193, 1200
Parker v. Brown, 317 U.S. 341, 87 L.Ed. 315
12 U.S. Sup. Ct. Digest, p. 388 et seq.

were necessary to confirm the claim of the city, might it not be presumed under such circumstances? . . .

The government of the United States, as was well observed in the argument, is one of limited powers. It can exercise authority over no subjects except those which have been delegated to it. Congress cannot, by legislation, enlarge the federal jurisdiction, nor can it be enlarged under the treaty-making power . . .

That this common, having been dedicated to public use, was withdrawn from commerce, and from the power of the king rightfully to alien it, has already been shown; and also, that he had a limited power over it for certain purposes. Can the federal government exercise this power?. . .

It is very clear that as the treaty cannot give this power to the federal government, we must look for it in the Constitution, and that the same power must authorize a similar exercise of jurisdiction over every other quay in the United States. A statement of the case is a sufficient refutation of the argument.

Special provision is made in the Constitution for the cession of jurisdiction from the States over places where the federal government shall establish forts or other military works. And it is only in these places, or in the territories of the United States, where it can exercise a general jurisdiction.

The State of Louisiana was admitted into the Union on the same footing as the original States. Her rights of sovereignty are the same, and by

consequence no jurisdiction of the federal government, either for purposes of police or otherwise, can be exercised over this public ground, which is not common to the United States. It belongs to the local authority to enforce the trust, and prevent what they shall deem a violation of it by the city authorities.

All powers which properly appertain to sovereignty which have not been delegated to the federal government, belong to the States and the people.

It is enough for this court, in deciding the matter before them, to say that in their opinion, neither the fee of the land in controversy nor the right to regulate the use, is vested in the federal government. . ."

Although defenses of laches, estoppel and prescription may not be argued by individuals against a state or the Federal Government because the sovereign is immune from such a plea, the rule is different where two sovereign powers are involved. *In Phillips v. Payne*, 92 U. S. 130, 132, 23 L.Ed. 649, the Court

"The law of prescription applies to nations with the same effect as between individuals."[62]

Estoppel, like prescription, resting on considerations of fairness and justice, has been applied between sovereign nations. See Lauterpacht, Private Law

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[62]See also: Arkansas v. Tenn. 310 U.S. 563, 570, 84 L.Ed. 1362, 1366-7; New Mexico v. Texas, 275 U.S. 279, 298-9, 72 L.Ed. 280; U. S. v. Chaves, 159 U.S. 452, 40 L.Ed. 215, 220; Guaranty Trust v. U. S., 304 U.S. 126, 134, 82 L.Ed. 1224, 1229.

Sources and Analogies of International Law (London, 1927) 203-2-7, citing seven important international arbitration cases where estoppel was made the basis of the award.

In the case of *Maryland v. West Virginia*, 217 U. S. 1, 42, 54 L.Ed. 645, 658, this Court said.[63]

> "As said by this Court in the recent case of Indiana v. Kentucky, 136 US 479, 510, 34 L.Ed. 329, 10 S.Ct. Rep. 1051, 'it is a principle of public law, universally recognized, that long acquiescence in the possession of territory, and in the exercise of dominion and sovereign over it, is conclusive of the nation's title and rightful authority.' "

It will thus be seen that the law of nations on the subject of prescription, laches and estoppel has been applied by this Court to the sovereign States of the United States. It is equally applicable to the national sovereign.

The Supreme Court has held that acquiescence by the United States in a boundary is binding. In *Missouri v. Iowa*, 7 How. 658, 674 12 L.Ed. 861, 867 this Court said:

> ". . . And as the treaties were drawn by authority of the United States, they must be taken as recognitions, on the part of the general govern-

[63]See Also: Rhode Island v. Mass., 4 How. 591, 639, 11 L.Ed. 1116, 1137; Louisiana v. Miss., 202 U.S. 1, 53, 50 L. Ed. 913, 932; Indiana v. Kentucky, 136 U.S. 479, 510, 34 L.Ed. 329, 332.

ment, that the Missouri boundary and the old Indian boundary are identical. . .

. . . From these facts it is too manifest for argument to make it more so, that the United States were committed to this line when Iowa came into the Union. And, as already stated, Iowa must abide by the condition of her predecessor, and cannot now be heard to disavow the old Indian line as her true southern boundary."

In *United States v. Texas*, 162 U. S. 1, 60, 40 L.Ed. 867, 892, Mr. Justice Harlan made the following statement in the opinion of the Court:

"But it is said that the United States has in many ways, and during a very long period, recognized the claim of Texas to the territory in dispute, and upon principles of justice and equity should not be heard at this late day to question the title of the State.

. . . This question deserves the most careful examination, for long acquiescence by the general government in the claim of Texas would be entitled to great weight."

See also: *New Mexico v. Colorado*, 267 U. S. 30, 40-41, 69 L.Ed. 499, 502.

Under the foregoing decisions the possession and jurisdiction exercised by Louisiana in the Gulf of Mexico and the acquiescence of the Federal Government in that possession and jurisdiction are facts to which this Court should attach great weight in determining the rights of Louisiana in the submerged lands in dispute.

In a prior section of this brief we have outlined some of the Acts of the Louisiana Legislature assert-

ing jurisdiction over and ownership of the bed of the Gulf of Mexico, and have related facts to show that this jurisdiction and possession by the State have been exercised far out on the Continental Shelf and more than three leagues from coast. These are evidentiary facts of which the Court will not take judical notice and concerning which the State should be permitted to offer testimony and exhibits.

The acts of United States administrative and executive officials in recognizing Louisiana's title is certainly evidence to explain and interpret the original intent of the Federal and State governments in describing Louisiana's boundaries in the Act of Congress incorporating the Territory of Orleans into the State of Louisiana." In Appendix H filed with this brief various Acts of the Legislature are digested covering dealings between the State and national government respecting offshore lands.

By Act 117 of 1855 the Louisiana Legislature makes reference to appropriations made by Congress for the construction of lighthouses on the coast and waters of the State. The Act provides that the Governor of the State may transfer to the United States title

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"Mass. v. N. Y., 271 U.S. 65, 96, 70 L.Ed. 838, 848-851;
Martin's Lessee v. Waddell, 16 Pet. 410, 10 L.Ed. 1012;
Handly v. Anthony, 5 Wheat. 374, 383, 384, 5 L.Ed. 113, 115;
U. S. v. Hill, 120 U.S. 169, 30 L.Ed. 627;
Sutherland, Statutory Construction, 3 Ed., Vol. 2, Sec. Sec. 5103.

and jurisdiction over any tract of lands containing not more than twenty acres which might be selected by an officer of the United States for the purpose of erecting thereon a lighthouse, beacon, or other public work. This Act was carried forward in Section 2948 in the Louisiana Revised Statutes of 1870, and is repeated in Act 13 of 1871. Pursuant to these Acts of the Louisiana Legislature, the Federal Government did acquire lighthouse sites on the coast and in the Gulf of Mexico from the State of Louisiana, thereby recognizing title of the State thereto.

The Louisiana Legislature in 1921 passed Act 11, (eleven) authorizing the Governor of the State to withdraw from sale certain State lands for the purpose of maintaining the navigability of the channels of the Mississippi River at its Mouth in the Gulf of Mexico. This Act recites that the United States Government, through its War Department Chief Engineers, had requested such legislation. The lands so withdrawn by the State from entry and sale extend to deep water in the Gulf of Mexico, and are bounded on the south by deep water in the Gulf of Mexico. Obviously, this Act asserted State jurisdiction and title over submerged lands lying seaward of the Mississippi River Delta.

Again in 1921 the Louisiana Legislature passed Act 52 for the creation of a Game and Fish Reserve and Public Hunting Grounds in the Delta of the Mississippi River. The lands described in this Act included submerged lands lying seaward of the Delta in the Gulf of Mexico.

By Act 329 of 1948, Louisiana joined with Florida, Alabama, Mississippi and Texas, the only other

Gulf coast states, by entering into the "Gulf States Marine Fisheries Compact", in which those states asserted their proprietary interest in and jurisdiction over marine fisheries in the Gulf of Mexico within their respective boundaries. This contract was assented to by Congress under Public Law 66, 81st Congress. It is significant to observe that in agreeing that the Fish and Wildlife Service of the United States Department of the Interior be the primary research agency of the Gulf States Marine Fisheries Commission (Compact, Art. VII), Congress recognized the proprietorship and jurisdiction of Louisiana and the other Gulf coast states in the waters, resources and seabeds within the historic seaward boundaries of the respective states. (Defendant's App. H contains excerpts from said Compact).

In the Legislative history of the Submerged Lands Act Congress took cognizance of the fact that State ownership of the submerged lands has been recognized not only by the Federal judiciary over a period of 160 years but also by the Executive Departments of the Federal Government,[65] and Congress itself.[66]

Louisiana is entitled to offer evidence, oral and documentary, for the purpose of showing acquiescence and recognition of title in the State by the Federal Government.

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[65] House Report # 215, 83rd Congress, 1st Session, page 44.

Senate Report # 133, 83rd Congress, 1st Session, page 16.

[66] Public Law 66, 81st Congress

CONCLUSION

Louisiana submits that its motion to take depositions should be sustained and that it be allowed to take the testimony of witnesses in support of the allegations of fact made in its Answer, and that the Plaintiffs motion for Judgment be overruled.

In the alternative if the Court should deny Louisiana's motion to take deposition then, it is respectfully submitted that the motion for judgment should be denied, and the Court should hold that the boundaries of Louisiana are co-extensive with the boundaries of the United States, and since the latter has extended the national boundary to the edge of the Continental Shelf, Louisiana's boundary also extends to the edge of the Continental Shelf; and that within such boundary the State of Louisiana has ownership of the seabed, subsoil and mineral resources of the Continental Shelf.

Defendant has shown that its historic boundaries extended to the 27th parallel of latitude by virtue of the Proclamation of LaSalle and the Treaty of Cession with France in 1803, and that the United States acquired that portion of the territory lying seaward in the Gulf of Mexico in trust for the State of Louisiana, and in admitting Louisiana to the Union reserved no part of the seabed, subsoil or natural resources of the Continental Shelf.

The State has further shown that the United States has not acquired any title to the Continental Shelf by any method enumerated or implied in the Constitution and that the United States has no lawful

right to dispossess the State from submerged lands and resources which it has possessed and over which it has exercised jurisdiction for a long period of time; and that to the extent that the Submerged Lands Act or the Outer Continental Shelf Lands Act of 1953 permit the Federal Government to exercise proprietary rights in said area they are violative of obligations made in Louisiana's behalf in the Treaty of Paris in 1803 and are furthermore in conflict with the fifth, ninth and tenth amendments to the Constitution, and are also in conflict with Article IV, Section 4 of the Constitution.

In the alternative, and only if the Court should deny Louisiana's title and claim set forth above, it is submitted that Act 33 of 1954 of the Legislature of Louisiana correctly designates the coast line of the State as fixed in accordance with appropriate Acts of Congress, and that Louisiana's boundary extends three leagues seaward of that line under the terms of the Act admitting the State to the Union in 1812.

It is further submitted in the alternative that since the United States has consistently approved State ownership of a three league belt in the Gulf of Mexico, and that the Congress has recognized the boundaries of Texas and Florida as extending three leagues into the Gulf of Mexico, any contrary interpretation of the Act of Admission of Louisiana would deprive this

State of the benefits of the equal footing clause of the Constitution.

Respectfully submitted,

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PROOF OF SERVICE

I, ——————————— one of the attorneys for the State of Louisiana, defendant herein, and a member of the Bar of the Supreme Court of the United States, certify that on the ———day of——— ———————, 1957, I served copies of the foregoing Brief of the State of Louisiana In Opposition To The Motion For Judgment By The United States, by leaving copies thereof at the offices of the Attorney General and the Solicitor General of the United States, respectively, in the Department of Justice Building, Washington, D. C.

———————————

OF COUNSEL

Office - Supreme Court, U.S.
FILED
MAR 28 1957
JOHN T. FEY, Clerk

No. 10 ORIGINAL

In the Supreme Court of the United States

OCTOBER TERM, 1956

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA

Appendix To Brief On Behalf Of The State Of Louisiana

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No. 11 ORIGINAL

In the Supreme Court of the United States

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Appendix To Brief On Behalf Of The State Of Louisiana

A. CONTINENTAL SHELF — EXECUTIVE AND LEGISLATIVE PROCLAMATIONS AND ACTS

1. PRESIDENTIAL PROCLAMATION

No. 2667

(10 F. R. 12303)

"A PROCLAMATION (No. 2667)

Policy Of The United States With Respect To The Natural Resources Of The Subsoil And Sea Bed Of The Continental Shelf

(By the President of the United States of America)

WHEREAS the Government of the United States of America, aware of the long range world-wide need for new sources of petroleum and other minerals, holds the view that efforts to discover and make available new supplies of these resources should be encouraged; and

Whereas, its competent experts are of the opinion

that such resources underlie many parts of the continental shelf off the coasts of the United States of America, and that with modern technological progress their utilization is already practicable or will become so at an early date; and

Whereas, recognized jurisdiction over these resources is required in the interest of their conservation and prudent utilization when and as development is undertaken; and

Whereas, it is the view of the Government of the United States that the exercise of jurisdiction over the natural resources of the subsoil and sea bed of the continental shelf by the contiguous nation is reasonable and just, since the effectiveness of measures to utilize or conserve these resources would be contingent upon cooperation and protection from the shore, since the continental shelf may be regarded as an extension of the land-mass of the coastal nation and thus naturally appurtenant to it, since these resources frequently form a seaward extension of a pool or deposit lying within the territory, and since self-protection compels the coastal nation to keep close watch over activities off its shores which are of the nature necessary for utilization of these resources;

NOW, THEREFORE, I, HARRY S. TRUMAN, President of the United States of America, do hereby proclaim the following policy of the United States of America with respect to the natural resources of the subsoil and sea bed of the continental shelf.

Having concern for the urgency of conserving and

prudently utilizing its natural resources, the Government of the United States regards the natural resources of the subsoil and sea bed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control. In cases where the continental shelf extends to the shores of another State, or is shared with an adjacent State, the boundary shall be determined by the United States and the State concerned in accordance with equitable principles. The character as high seas of the waters above the continental shelf and the right to their free and unimpeded navigation are in no way thus affected.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

DONE at the City of Washington this twenty-eighth day of September, in the year of our Lord nineteen hundred and forty-five, and of the Independence of the United States of America, the one hundred and seventieth.

HARRY S. TRUMAN

(Seal)

By the President:

Dean Acheson,

Acting Secretary of State.

September 28, 1945.

2. SUBMERGED LANDS ACT OF MAY 22, 1953
67 Stat. 29, 43 U.S.C. 1301, et seq.

Title 1, Sec. 2, 43 U.S.C. 1301 (a) (2), (b), (c), (e):

When used in this chapter

(a) The term "lands beneath navigable waters" means—

(2) all lands permanently or periodically covered by tidal waters up to but not above the line of mean high tide and seaward to a line three geographical miles distant from the coast line of each such State and to the boundary line of each such State where in any case such boundary as it existed at the time such State became a member of the Union, or as heretofore approved by Congress, extends seaward (or into the Gulf of Mexico) beyond three geographical miles, and

(b) The term "boundaries" includes the seaward boundaries of a State or its boundaries in the Gulf of Mexico or any of the Great Lakes as they existed at the time such State became a member of the Union, or as heretofore approved by the Congress, or as extended or confirmed pursuant to section 1303 of this title but in no event shall the term "boundaries" or the term "lands beneath navigable waters" be interpreted as extending from the coast line more than three geographical miles into the Atlantic Ocean or the Pacific Ocean, or more than three marine leagues into the Gulf of Mexico;

(c) The term "coast line" means the line of ordi-

nary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters;

(e) The term "natural resources" includes, without limiting the generality thereof, oil, gas, and all other minerals, and fish, shrimp, oysters, clams, crabs, lobsters, sponges, kelp, and other marine animal and plant life but does not include water power, or the use of water for the production of power;

Title II, Sec. 3, 43 U.S.C 1311:

(b) (1) The United States releases and relinquishes unto said States and persons aforesaid, except as otherwise reserved herein, all right, title, and interest of the United States, if any it has, in and to all said lands, improvements, and natural resources;

Title II, Sec. 4, 43 U.S.C. 1312:

§ 1312. **Seaward boundaries of States**

The seaward boundary of each original coastal State is approved and confirmed as a line three geographical miles distant from its coast line or, in the case of the Great Lakes, to the international boundary. Any State admitted subsequent to the formation of the Union which has not already done so may extend its seaward boundaries to a line three geographical miles distant from its coast line, or to the international boundaries of the United States in the Great Lakes or any other body of water traversed by such boundaries. Any claim heretofore or hereafter asserted either by constitutional provision, statute, or other-

wise, indicating the intent of a State so to extend its boundaries is approved and confirmed, without prejudice to its claim, if any it has, that its boundaries extend beyond that line. Nothing in this section is to be construed as questioning or in any manner prejudicing the existence of any State's seaward boundary beyond three geographical miles if it was so provided by its constitution or laws prior to or at the time such State became a member of the Union, or if it has been heretofore approved by Congress. May 22, 1953, c. 65, Title II, § 4, 67 Stat. 31.

3. OUTER CONTINENTAL SHELF LANDS ACT OF AUGUST 7, 1953

67 Stat. 462, 43 U.S.C. 1331, et seq.

Sec. 2, 43 U.S.C. 1331 (a) :

When used in this subchapter—

(a) The term "outer Continental Shelf" means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 1301 of this title, and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control;

Sec. 3, 43 U.S.C. 1332:

§ 1332. Congressional declaration of policy; jurisdiction; construction

(a) It is declared to be the policy of the United States that the subsoil and seabed of the outer Conti-

nental Shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition as provided in this subchapter.

(b) This subchapter shall be construed in such manner that the character as high seas of the waters above the outer Continental Shelf and the right to navigation and fishing therein shall not be affected. Aug. 7, 1953, c. 345, § 3, 67 Stat. 462.

Sec. 4(a) (1) 43 U.S.C. 1333:

§ 1333. Laws and regulations governing lands —Constitution and United States laws; laws of adjacent States; Publication of projected State lines; restriction on State taxation and jurisdiction

(a) (1) The Constitution and laws and civil and political jurisdiction of the United States are extended to the subsoil and seabed of the outer Continental Shelf and to all artifical islands and fixed structures which may be erected thereon for the purpose of exploring for, developing, removing, and transporting resources therefrom, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State: *Provided, however,* That mineral leases on the outer Continental Shelf shall be maintained or issued only under the provisions of this subchapter.

4. EXTRACTS FROM THE LEGISLATIVE HISTORY OF THE SUBMERGED LANDS ACT AND OUTER CONTINENTAL SHELF LANDS ACT

House Report No. 215, 83rd Cong. 1st Sess.*

Mr. Reed of Illinois, from the Committee on the Judiciary submitted the following

REPORT
(To accompany H. R. 4198)

(1) The Committee on the Judiciary, to whom was referred the bill (H. R. 4198) to confirm and establish the titles of the States to lands beneath navigable waters within State boundaries and to the natural resources within such lands and waters, and to provide for the use and control of said lands and resources and the resources of the outer Continental Shelf, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

Preliminary Statement

For legislative background and factual information on previous measures relating to title and control of lands beneath navigable waters within State boundaries, the use and control of said lands and natural resources therein, as well as control, exploration, development, and conservation of certain resources of the Continental Shelf, there is incorporated

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* Page numbers of this report are inserted in the text in parentheses.

in this report as an appendix hereto, House Report No. 695 of the 82d Congress, 1st Session.

The Need For Legislation (2)

Since the court decisions in the cases involving the States of California, Louisiana, and Texas, new development of the vast potentialities located in these lands has been brought almost to a complete standstill, particularly in the Gulf of Mexico. The litigation which was the primary cause of these stoppages threatens to further retard any progress. Therefore, the committee feels that permanent legislation covering all phases of this litigation must be enacted.

Another factor which gives support for the enactment of such legislation appears in the activities of other sovereign nations throughout the world in extending their jurisdiction seaward over these lands off their respective shores. Such extensions vary from a few miles to 200 miles . . .

Title II—Lands Beneath Navigable Waters Within State Boundaries (5)

The United States relinquishes unto said States or persons all rights, titles, interest, if any it has, to all these lands, moneys, improvements, and natural resources. All claims arising out of past operations in this area are released by the United States.

Title III—Outer Continental Shelf Outside State Boundaries (6)

What is the Continental Shelf?

Continental shelves have been defined as those

slightly submerged portions of the continents that surround all the continental areas of the earth. They are a part of the same continental mass that forms the lands above water. They are that part of the continent temporarily (measured in geological time) overlapped by the oceans. The outer boundary of each shelf is marked by a sharp increase in the slope of the sea floor. It is the point where the continental mass drops off steeply toward the ocean deeps. Generally, this abrupt drop occurs where the water reaches a depth of 100 fathoms or 600 feet, and, for convenience, this depth is used as a rule of thumb in defining the outer limits of the shelf.

Necessity for legislation (7)

The committee is also of the opinion that legislative action is necessary in order to confirm and give validity to Presidential Proclamation 2667 of September 8, 1945, wherein the President, By Executive declaration asserted, in behalf of the United States, jurisdiction, control, and power of disposition over the natural resources of the subsoil and seabed of the Continental Shelf. Many other nations have made assertions to a similar effect with respect to their continental shelves, and the committee believes it proper and necessary that the Congress make such an assertion in behalf of the United States. Such assertion is made in section 8 (a) of the bill.

. . . This Nation's claim to the natural resources was strengthened by the earlier action of some of the States in leasing, and consequently bringing about the

actual use and occupancy of the Continental Shelf. The benefits flowing to the United States from such State action was recognized by the Supreme Court in the Louisiana case, for it said:

> "So far as the issues presented here are concerned, Louisiana's enlargement of her boundary emphasizes the strength of the claim of the United States to this part of the ocean and the resources of the soil under that area, including oil."

APPENDIX

HOUSE OF REPRESENTATIVES
82d Congress—*First Session*

Report No. 695

Mr. Fellows, from the Committee on the Judiciary, submitted the following

REPORT

(To accompany H. R. 4484)

The Committee on the Judiciary, to whom was referred the bill (H. R. 4484) to confirm and establish the titles of the States to lands beneath navigable waters within State boundaries and to the natural resources within such lands and waters, to provide for the use and control of the lands and resources, and to provide for the use, control, exploration, development, and conservation of certain resources of the Continental Shelf lying outside of State boundaries, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

Introduction

H. R. 4484 is similar to H. R. 8137, Eighty-First

Congress, second session, favorably reported by this committee to the House of Representatives on May 17, 1950, and is also similar in many respects to H. R. 5991 on which hearings were held on August 24, 25, and 29, 1949 by Subcommittee No. 1 of the Committee on the Judiciary of the House of Representatives.

(5) Title II merely fixes as the law of the land that which, throughout our history prior to the Supreme Court decision in the California case in 1947, was generally believed and accepted to be the law of the land; namely, that the respective States are the sovereign owners of the land beneath navigable waters within their boundaries and of the natural resources within such lands and waters. Therefore, title II recognizes, confirms, vests, and establishes in the States the title to the submerged lands, which they have long claimed, over which they have always exercised all the rights and attributes of ownership.

(11) The Continental Shelf off the United States, excluding Alaska, embraces some 185,800,000 acres, divided approximately in three regions, as follows:

	Acres
Pacific Ocean	11,900,000
Gulf of Mexico	92,300,000
Atlantic Ocean	81,600,000

(15) At the time Louisiana and Texas extended their seaward boundaries to 27 marine miles, the United States was not claiming ownership or jurisdiction and control over the Continental Shelf. Actually, some years earlier the State Department had taken

the position that the United States had no jurisdiction over the ocean bottom of the Gulf of Mexico beyond the territorial waters adjacent to the coast and that therefore it was not in a position to grant a lease on this area.

(16) Furthermore, the United States did not dispute the actions taken by the two States. While on September 8, 1945, President Truman issued Proclamation 2667 declaring that the natural resources of the subsoil of the sea bed of the Continental Shelf adjacent to the United States were subject to its jurisdiction and control, Executive Order 9663, issued on the same day, provided that neither it nor the proclamation should affect the determination of any issue between the United States and the several States relating to the ownership and control of the Continental Shelf either within or outside the 3-mile limit. From their own provisions it is clear that the proclamation and Executive order were merely an assertion of the jurisdiction and control as against foreign nations and merely the means of placing other countries on notice of the policy to be followed by the United States with reference to the resources of the Continental Shelf. This view is confirmed by the White House press release issued along with the proclamation and order.

As previously mentioned, no Federal claim against Louisiana and Texas was made until motion for leave to file suit against these States was filed by the United States Attorney General in the Supreme Court on De-

cember 21, 1948. No Federal claim has yet been made against Florida . . .

(17) Section 8 of H. R. 4484 asserts Federal jurisdiction and control over the Continental Shelf areas beyond original State boundaries, thus bringing the lands and resources within such areas into the same legal status as those acquired by the United States through cession or annexation; in the alternative, such lands and resources are subject to the doctrine of discovery. Adherence to the policy heretofore observed in connection with similar lands and resources brought under national dominion requires, as a matter of policy and law, that the property rights of individuals in and to such lands and resources be recognized and confirmed.

APPENDIX I

HOUSE OF REPRESENTATIVES
80th Congress—2d Session
Report No. 1778

REPORT

(To accompany H. R. 5992)

The Committee on the Judiciary, to whom was referred the bill (H. R. 5992) to confirm and establish the titles of the States to lands beneath navigable waters within State boundaries and natural resources within such lands and waters and to provide for the use and control of said lands and resources, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

Introduction

H. R. 5992, is, in substance, the same as numer-

ous bills introduced in the House. It is substantially the same as S. 1988 introduced in the Senate jointly by 20 Senators.

(22) I. Support for and opposition to the legislation

Supported by public officials

The measure is actively supported by a large number of organizations composed of public officials, among which are (*a*) the National Association of Attorneys General, made up of the attorneys general of the 48 States; (*b*) Conference of Governors, composed of the governors of the 48 States; (*c*) National Association of State Land Officials; (*d*) American Association of Port Authorities; (*e*) National Institute of Municipal Law Officers; (*f*) Council of State Governments; (*g*) Conference of Mayors; (*h*) Interstate Oil Compact Commission; (*i*) National Association of Secretaries of State; and (*j*) Port of New York Authority. Hon. Millard F. Caldwell, Governor of the State of Florida; Hon. J. Strom Thurmond, Governor of the State of South Carolina; Hon. William Tuck, Governor of the State of Virginia; Hon. Frank Carlson, Governor of the State of Kansas; Hon. Beauford H. Jester, Governor of the State of Texas; and Hon. Earl Warren, Governor of the State of California, appeared in person to support the legislation. Numerous other State governors appeared through personal representatives or filed statements in support of the legislation. The attorneys general of 38 States appeared in person or through their assistants and depu-

ties or filed statements urging the adoption of the legislation. Representatives of the State Legislature of the State of California appeared in person. (3) Resolutions and memorials in support of the legislation were received from a number of State legislative bodies.

Supported by other organizations

Representatives of other organizations appeared to support the bill, including (*a*) American Bar Association, (*b*) Texas Bar Association, (*c*) United States Chamber of Commerce, and (*d*) Independent Petroleum Association of America. Also, numerous organizations submitted statements and resolutions supporting the legislation, including State teachers' associations, civic organizations, and commercial associations.

II. Purpose of Legislation (3)

The purpose of H. R. 5992, like that of House Joint Resolution 225, which passed the Seventy-ninth Congress by a very substantial majority but was vetoed by President Truman, is to confirm and establish the rights and claims of the 48 States, long asserted and enjoyed with the approval of the Federal Government, to the lands and resources beneath navigable waters within their boundaries; subject, however, to the right of the United States to exercise all of its constitutional regulatory powers over such lands and waters.

III. History of Legislation (4-5)

One hundred and sixty years of unchallenged ownership by the States

Throughout our Nation's history the States have been in possession of and exercising all the rights and attributes of ownership in the lands and resources beneath the navigable waters within their boundaries. During a period of more than 150 years of American jurisprudence the Supreme Court, in the words of Mr. Justice Black, had—

> used language strong enough to indicate that the Court then believed that the States also owned soils under all navigable waters within their territorial jurisdiction, whether inland or not.

That same belief was expressed in scores of Supreme Court opinions and in hundreds of lower Federal courts' and State courts' opinions. Similar beliefs were expressed in rulings by Attorneys General of the United States, the Department of the Interior, the War Department, and the Navy Department. Lawyers, legal publicists, and those holding under State authority accepted this principle as the well-settled law of the land.

As late as 1933, the then Secretary of the Interior, Harold L. Ickes, in refusing to grant a Federal oil lease on lands under the Pacific Ocean within the boundaries of California, recognized:—

> Title to the soil under the ocean within the 3-mile limit is in the State of California, and the

land may not be appropriated except by authority of the State.

Claims of States first challenged by Federal officals in 1937

It was not until a few applicants for Federal oil leases and their attorneys continued to insist that the United States owned the soil under navigable waters, that, in the words of Mr. Ickes, "doubt" arose in his mind as to which Government owned the submerged lands. The "doubt" was first publicly expressed in the Nye resolution introduced in the Seventy-fifth Congress in 1938, and was subsequently expressed in the Hobbs and O'Connor resolutions and the Nye and Walsh resolutions introduced in the Seventy-sixth Congress in 1939, all of which failed of enactment. . . .

The theory advanced in 1938 and 1939 by the same Federal departments which now oppose H. R. 5992 was to the effect that the United States had no right to appropriate the natural resources within the submerged coastal lands unless the Congress, as the policy-making branch of the Government, asserted what was contended to be a dormant right. They spoke of the right as being "novel" and one never before asserted by the United States under the Constitution, and as being a right which the States had been asserting and enjoying, and would continue to assert and enjoy unless and until the Congress changed the policy of the Federal Government. Congress, however, did not change the long-existing and recognized policy.

Decision of Supreme Court denying California ownership (5)

On June 23, 1947, the Supreme Court rendered its opinion in the case of *United States v. California*, and on October 27, 1947, a decree was entered which reads, in part, as follows:

1. The United States of America is now, and has been at all times pertinent hereto, possessed of paramount rights in, and full dominion and power over, the lands, minerals, and other things underlying the Pacific Ocean lying seaward of the ordinary low-water mark on the coast of California, and outside of the inland waters, extending seaward three nautical miles and bounded on the north and south, respectively, by the northern and southern boundaries of the State of California. The State of California has no title thereto or property interest therein.

In the Court's majority opinion, Mr. Justice Black said: (6)

> The crucial question on the merits is not merely who owns the bare legal title to the lands under the marginal sea. The United States here asserts rights in two capacities transcending those of a mere property owner.

He then proceeded to define those two capacities as that of national defense and of conducting foreign relations.

Mr. Justice Black, in the majority opinion, stated further:

> As previously stated this Court has followed

and reasserted the basic doctrine of the Pollard case many times. And in doing so it has used language strong enough to indicate that the Court then believed that States not only owned tidelands and soil under navigable inland waters, but also owned soils under all navigable waters within their territorial jurisdiction, whether inland or not.

Thus the Court by its decision not only established the law differently from what eminent jurists, lawyers, and public officials for more than a century had believed it to be, but also differently from what the Supreme Court apparently had believed it to be.

This committee, having heard the testimony of many able and distinguished State attorneys general, of representatives of the American Bar Association and State bar associations, and of other able and distinguished jurists and lawyers, is of the opinion that no decision of the Supreme Court in many years has caused such dissatisfaction, confusion, and protest as has the California case. We have heard it described in such terms as "novel," "strange," "extraordinary and unusual," "creating an estate never before heard of," "a reversal of what all competent people believed the law to be," "creating a new property interest," "a threat to our constitutional system of dual sovereignty," "a step toward the nationalization of our natural resources," "causing pandemonium," etc.

(8) Mr. Justice Black, in speaking for the majority of the Court in the California case, said:

The very oil about which the State and Na-

tion here contend might well become the subject of international dispute and settlement.

If the Court in making the statement had reference to the military power of a foreign nation to dispute the rights of the States to take oil under submerged lands within their boundaries, then the same statement could correctly be made about oil under uplands, providing, of course, the foreign nation possessed a military force strong enough to compel a settlement by the United States. However, if the statement was made because the Congress had never legislatively asserted on behalf of the United States or the States title to the submerged lands within their boundaries, then we think that is all the more reason why the Congress should now remove all doubt about the title by ratifying and confirming the titles long asserted by the various States, subject always, of course, to the paramount powers of the Federal Government under the Constitution, which titles have never been disputed by any foreign nation.

Federal Government has traditionally obtained grants from the States (12)

At the request of executive departments of the Federal Government, the States have deeded to the United States portions of their submerged lands lying outside the inland waters and within the 3-mile belt. (See Government's brief, p. 227 et seq. and appendix to California's brief, p. 169 et seq. in *U. S. v. California.*) . . .

These facts establish conclusively that the States,

during more than a century, have been exercising the highest rights of ownership by conveying to the United States a part of the submerged lands within their boundaries.

Possession and use of submerged coastal lands by the States (13)

The earliest assertions by the States of proprietary rights in their submerged lands arose in connection with regulation of fishing. Except in a few instances, where international treaties were involved, State control of fishing in navigable waters, within the State's boundaries, has been exclusive. The principal basis for this right to control fishing rests upon the proprietary rights of the State to the waters and the soil thereunder. Proprietary rights further have been exercised by granting leases for harvesting kelp, removing sand, gravel, shells, sponges, etc. States and their grantees have expended millions of dollars to build piers, breakwaters, jetties, and other structures, to install sewage-disposal systems and to fill in beaches and reclaim lands. During the past two decades California, Louisiana, and Texas have been leasing substantial portions of the lands in question for oil, gas, and mineral development. California commenced such leasing in 1921 and Texas in 1926. Other States, including Washington, Florida, Mississippi, North Carolina, and Maryland, have made leases for like purposes. States have levied and collected taxes upon interests in and improvements on these lands. It ap-

pears to the committee that the States have exercised every sovereign right incident to the utilization of these submerged coastal lands.

Recognition of State ownership by Congress (13)

In 1868 Congress approved the Constitution of Florida, in which its boundaries were defined as extending 3 marine leagues seaward and a like distance into the Gulf of Mexico. Texas' boundary was fixed 3 marine leagues into the Gulf of Mexico at the time it was admitted to the Union in 1845 by the annexation agreement. . . .

"In 1938 and 1939 the Congress failed to enact legislation asserting ownership of submerged lands in the Federal Government, and in 1946 the Congress confirmed States' ownership of such lands by enactment of House Joint Resolution 225, which was vetoed by President Truman.

These affirmative acts by the Congress, and its failure to deny State ownership at any time in our history, establish conclusively that the congressional policy, at least since 1850, consistently has been to recognize State ownership of the lands in question.

Recognition of State ownership by the executive departments

Many attorneys general have approved, over a period of 100 years, as required by law, the title to the submerged coastal lands granted to the United States by the States. The War and Navy Departments have treated these lands as owned by the States since the

Departments originated most of the requests for State grants of such lands to the United States. In some 30 opinions, from 1900 to 1937, the Department of the Interior ruled that ownership of the soil in the 3-mile belt was in the respective States. A quotation from one of these decisions rendered February 7, 1935, will illustrate the opinion of the Interior Department:

> It is not questioned that the land lies below the level of ordinary high tide of the Pacific Ocean. * * *
>
> "Upon the admission of California into the Union upon equal footing with the original States, absolute property in, and dominion and sovereignty over, all soils under the tidewaters within her limits passed to the State, with the consequent right to dispose of the title to any part of said soils in such manner as she might deem proper, * * * " (*Weber v. Harbor Commissioners*, 18 Wall. 57, 65).
>
> The Department, therefore, has no jurisdiction over the subject matter. This rule is regarded as decisive and binding on the Department. * *

In its opinion in the California case, the Supreme Court agrees that the facts above discussed are—"undoubtedly consistent with the belief on the part of some Government agents at the time that California owned all, or at least, a part of the 3-mile belt."

The facts are conclusive that at least prior to 1937 the policy of the executive departments of the Government has consistently been to recognize State ownership of the submerged lands, whether inland or not, within the territorial jurisdiction of the State.

Recognition of State ownership by the judiciary

The evidence conclusively establishes that prior to the California decision the Supreme Court had in more than 30 cases, covering the period 1842 to 1935, announced the principle that the States owned the soils under all navigable waters within their territorial jurisdiction whether inland or not. A few examples of the language used in these decisions follow (emphasis supplied):

> For when the Revolution took place the people of each State became themselves sovereign, and in that character hold the absolute right to *all their navigable waters* and the soils under them * * * (*Martin v. Waddell*, 16 Peters 367, 410 (1842).
>
> (15) All soils under the tidewaters within her limits passed to the State (*Weber v. Harbor Commissioners*, 18 Wallace 57, 66 (1873).
>
> It is the settled law of this country that the ownership of and dominion and sovereignty over lands covered by tidewaters, *within the limits of the several States*, belong to the respective States within which they are found, * * * (*Illinois Central R. R. Co. v. Illinois*, 146 U. S. 387 (1892).
>
> The soils under *tidewaters* within the original States were reserved to them respectively, and the States since admitted to the Union have the same sovereignty and jurisdiction to such lands *within their borders* as the original States possessed (*Borax Consolidated v. Los Angeles*, 296 U. S. 10, 15 (1935).

The committee takes cogizance of the fact that the word "tidewaters" as applied to the facts in the cases cited above could not refer merely to the strip of land between high and low-water mark. Indeed, it was held by the Supreme Court of the United States in *Manchester v. Mass.* (139 U. S. 258) that the term "tidewaters" includes the 3-mile belt.

The above citations are by no means isolated instances. Similar expressions have been used in Supreme Court opinions written by some of the most outstanding jurists in American history. Among them are Chief Justices Waite, Fuller, White, Taft, Stone, and Justices Lamar, Gray, Holmes, Brandeis, and Cardozo.

Hon. Manley O. Hudson, appearing at the request of Texas, after citing and quoting from a number of cases by the Supreme Court, commented on the expressions of the Court as follows:

> It is an imposing array of pronouncements —as imposing for their consistency as for the repetition. Mr. Justice Black says with becoming modesty that the Court "has used language strong enough to indicate that the Court then"—that is, over a period of a hundred years—"believed that States not only owned tidelands and soil under navigable inland waters, but also owned soils under all navigable waters within their territorial jurisdiction, whether inland or not." He could have added that for generations lawyers, good lawyers, careful lawyers, all over the country believed the same thing, that they advised their

clients that such was the law, and that acting on that advice their clients invested millions of their money and years of their energy in improvements and installations.

The evidence is conclusive that not only did our most eminent jurists so believe the law to be, but such was the belief of lower Federal court jurists and State supreme court jurists as reflected by more than 200 opinions. The pronouncements were accepted as the settled law by lawyers and authors of leading legal treatises.

The present Court in the California decision did not expressly overrule these prior Supreme Court opinions but, in effect, said that all the eminent authorities were in error in their belief.

For the first time in history the Court drew a distinction between the legal principles applicable to bays, harbors, sounds, and other inland waters on the one hand, and to submerged lands lying seaward of the low-water mark on the other, although it appears the Court had ample opportunity to do so in many previous cases, but failed or refused to draw such distinction. In the California decision the Court refused to apply what it termed "the old inland water rule" to the submerged coastal lands; however, historically speaking, it seems clear that the rule of State ownership of inland waters is, in fact, an offshoot of the marginal sea rule established much earlier.

Equity best served by establishing State ownership

(16)

The repeated assertions by our highest Court for a period of more than a century of the doctrine of State ownership of all navigable waters, whether inland or not, and the universal belief that such was the settled law, have for all practical purposes established a principle which the committee believes should as a matter of policy be recognized and confirmed by Congress as a rule of property law.

The evidence shows that the States have in good faith always treated these lands as their property in their soverign capacities; that the States and their grantees have invested large sums of money in such lands; that the States have received, and anticipate receiving large income from the use thereof, and from taxes thereon; that the bonded indebtedness, school funds, and tax structures of several States are largely dependent upon State ownership of these lands; and that the legislative, executive, and judicial branches of the Federal Government have always considered and acted upon the belief that these lands were the properties of the sovereign States.

If these same facts were involved in a dispute between private individuals, an equitable title to the lands would result in favor of the person in possession. The Court in the California case states, as a matter of law, that the Federal Government—

is not to be deprived of those interests by the

ordinary court rules designed particularly for private disputes over individually owned pieces of property; * * *

The effect of this ruling of the Court is to place the State of California in the same legal position as an individual, thereby depriving it of its status as a sovereign. It should be noted that the case of *U. S. v. California* was a controversy between two sovereigns, namely, the United States on the one hand and the State of California on the other, both of which occupied equal dignity as sovereigns. The sovereign rights enjoyed by the United States were in the first instance derived from the States and the sovereign powers of the United States can rise no higher or have any greater effect than that which was delegated to the Central Government by the Constitution. The committee believes that, as a matter of policy in this instance, the same equitable principles and high standards that apply between individuals, should be applied by Congress as between the National Government and the sovereign States. (See Indiana v. Kentucky, 136 U.S. 479, 500 (1890); U. S. v. Texas, 162 U.S. 1, 61 (1896); New Mexico v. Texas, 275 U.S. 279 (1927).)

Therefore, the committee concludes that in order to avoid injustices to the sovereign States and their grantees, legislative equity can best be done by the enactment of S. 1988.

H. R. 5992 is not a gift to the States in any equitable sense

Attorney General Clark and Secretary Krug insisted that H. R. 5992 constituted a gift from the Federal Government to the several coastal States. Such objection, if it be one, must be predicated upon the assumption that H. R. 5992 will take from the United States Government some property right which it has heretofore enjoyed, and vest in the States rights and interest not hitherto enjoyed by the States. Such is not the case. The Federal Government has never, prior to 1937, asserted any right in the submerged tidelands, has never enjoyed any rights, either in its sovereign or proprietary capacity over such lands, but at all times, from the inception of the Government and prior to 1937, acting through its executive agencies, recognized that unqualified ownership was in the coastal States and that such States had full and complete sovereignty and dominion over these lands, subject to the constitutional right of the Federal Government to regulate commerce. The Committee cannot agree that the relinquishment by the Federal Government of something it never believed it had, and the confirmation of rights in the States which they always believed they did have and which they have always exercised, can be properly classified as a "gift," but rather a mere confirmation of titles asserted under what was long believed and accepted to be the la .. On the basis of such belief and acceptance the

States and their citizens have made large investments, in good faith, that would now be wiped out by the rule announced in the California case.

It is not in the public interest that administration and control of submerged lands be transferred from the States to the Federal Government (17)

This problem, as suggested by Mr. Justice Frankfurter, "involves many far-reaching, complicated, historic interests." Here we have the broad question whether Congress should confirm or whether it should reverse the traditional and long-accepted policy and practice that submerged lands within a State's boundary and all resources therein belong in a proprietary sense to the States, subject, of course, to all powers delegated to the United States by the Constitution. This far-reaching historic policy should be reversed only if the national interest demands such reversal. The committee is of the opinion that not only will the public interest be best served by confirming the rights of the States but that common justice and equity require such action.

The only reason advanced by the Federal officials who advocate the change is their desire for Federal management of the production of oil. It is noteworthy that the controversy had its inception in 1937 by reason of the Federal departments' attempt to secure congressional sanction of their plans to assume control of the oil fields off the California coast. The subject matter of the litigation instituted by the Department of Justice and resulting in the decision in *United*

States v. *California* was oil. The Departments of the Interior, Justice, and Defense base their objection to the continuance of State management of submerged lands on the sole ground that such lands contain valuable oil deposits. In their testimony the representatives of the Federal departments have admitted that they are not interested in anything but the oil. The Government's management bill deals only with oil.

Public interest as to resources other than oil (21)

The Court's decree in the California case covered not only the oil but the land, minerals, and "other things" underlying the ocean in the 3-mile belt.

The fishing industry is one of the major industries in our country and represents an important source of our food supply and of our national income. State control of fishing, especially for sedentary fish, such as shrimp, oysters, clams, crabs, lobsters, etc., has been based upon the State's ownership of the soil. Regulations by many States are based upon the statutory declaration of the State's ownership of the waters and the fish in them. In *Smith v. Maryland* (18 How. 74) the Court said:

> The State holds the *propriety* of this soil for the conservation of the public rights of fishing thereon, and may regulate the modes of that enjoyment so as to prevent the destruction of the fishery. * * * *This power results from the ownership of the soil,* from the legislative jurisdiction of the State over it, and from its duty to preserve those public uses *for which the soil is held.* [Italics supplied.]

SENATE REPORT NO. 133, 83RD CONGRESS, 1ST SESSION

Senate Report No. 133 recommending passage of the Submerged Lands Act contains statements almost identical with those set forth above in the House Report No. 215 regarding the purposes of the law, the history of the controversy as to State ownership, and the conclusions of the Senate Committee as to the necessity and desirability of recognizing State ownership of submerged lands by the States. A few excerpts from the Senate Report that are not repetitious are set forth hereinbelow.

The purpose of Senate Joint Resolution No. 13 which is similar to the House Bill is thus stated on page 5 of the Senate Report No. 133:

III. PURPOSE OF BILL

Senate Joint Resolution 13, as amended, determines and declares that it is in the public interest that title and ownership of lands beneath navigable waters within the boundaries of the respective States, and of the resources therein, be established and vested in the respective States. Insofar as the Federal Government has any proprietary rights in such lands and waters, that interest is relinquished or "quitclaimed" to the individual States.

The measure also provides that in addition to title and ownership, but distinct from them, the States have the right and power to manage, administer, lease, develop, and use such lands and

natural resources in accordance with the terms of Senate Joint Resolution 13 and applicable State law, and whatever rights the Federal Government may have in such management and administration are established in and assigned to the States.

The proposed legislation specifically sets forth that none of the interests or rights established in, or confirmed, assigned, or quitclaimed to the States shall in any wise affect the constitutional powers of the Federal Government to regulate commerce, provide for the common defense, or to conduct international affairs in the navigable waters areas within State boundaries.

The offshore rights confirmed to the States are thus described on page 6 of the Senate Report.

Offshore submerged lands

The offshore rights which are confirmed to the States and their grantees are rights growing out of the concept of ownership and proprietary use and development—rights which were first asserted by the Federal Government in recent years and which it has never exercised or enjoyed. These rights, legally vested in the States and their grantees by Senate Joint Resolution 13, have in fact been enjoyed and exercised by them from the beginning of our history as a nation until the date of the California decision.

Under this concept of ownership and control by the several States and their grantees immense development has been achieved representing untold millions of dollars of new economic wealth. This wealth has been created through control of

the taking, within the boundaries of the States, of various forms of marine life, such as fish, oysters, shrimp, sponges, kelp and others; through the use of sand, shell, gravel and important minerals; through the erection and use of piers, as well as bulkheads and groins for the filling and conservation of new lands; through the erection and control on said new-built lands of valuable recreational, commercial, and private improvements, and through construction and use of facilities for the disposal of sewage and industrial waste. The control by the States of the production of oil and gas from their coastal belts has also created substantial values, which will continue temporarily in a few places for a few years, but such production of oil and gas in the past, present, or future is insignificant in value when compared with the many permanent values which largely determine the development and prosperity of coastal communities and many important industries.

The intention of Congress to treat all States alike appears from the following statement on page 7 of the Senate Report:

All States treated alike

The joint resolution treats all of the States alike, both inland and coastal, with respect to lands beneath navigable waters within their respective boundaries. As shown by the list in appendix F, every State has submerged lands which

are covered by this joint resolution. Comparative totals show far greater areas under inland waters and the Great Lakes, as follows:

	Acres
Lands under inland waters	28,960,640
Lands under Great Lakes	38,595,840
Lands under marginal seas	17,029,120

All of these areas of submerged lands have been treated alike in this legislation because they have been possessed, used, and claimed by the States under the same rule of law, to wit: That the States own all lands beneath navigable waters within their respective boundaries. Prior to the California decision, no distinction had been made between lands beneath inland waters and lands beneath seaward waters so long as they were within State boundaries.

The rule was stated by the Supreme Court in the early case of *Pollard v. Hagan* (3 How. 212, 229 (1845)) in the following words:

First. The shores of navigable waters, and the soils under them, were not granted by the Constitution to the United States, but were reserved to the States respectively. Second. The new States have the same rights, sovereignty, and jurisdiction over this subject as the original States.

The Pollard case and its general rule common to lands under both inland and seaward waters was cited by 52 Supreme Court decisions and 244 State and Federal court decisions prior to the California case.[1] Excerpts from some of these opinions are included in appendix G.

[1] See Sheppard's Citations, *Pollard v. Hagan*, supra.

(8) The majority opinion in the California case concedes that the Supreme Court in the past has indicated its belief that this Pollard rule of State ownership applies equally to all lands under waters within their territorial jurisdiction, whether inland or seaward.

The purpose of this legislation is to write the law for the future as the Supreme Court believed it to be in the past—that the States shall own and have proprietary use of all lands under navigable waters within their territorial jurisdiction, whether inland or seaward, subject only to the governmental powers delegated to the United States by the Constitution.

The Senate Committee annexes to and makes part of Report No. 133 its report to the 80th Congress, 2nd Session, Report No. 1592, and this is set forth on pages 50 to 75 of Report No. 133.

Senate Report No. 133 ends with the following conclusion on page 24:

IX. Conclusion

The committee submits that the enactment of Senate Joint Resolution 13, as amended, is an act of simple justice to each of the 48 States in that it reestablishes in them as a matter of law that possession and control of the lands beneath navigable waters inside their boundaries which have existed in fact since the beginning of our Nation. It is not a gift; it is a restitution. By this joint resolution the Federal Government is itself doing the equity it expects of its citizens.

The committee recommends enactment of Senate Joint Resolution 13.

B. LOUISIANA'S POSSESSION AND EFFECTIVE OCCUPATION OF THE CONTINENTAL SHELF IS A BASIS OF TITLE TO THE SUB-SOIL, SEA-BED, AND NATURAL RESOURCES THEREOF

The idea that the Continental Shelf may be regarded as an extension of the land-mass of the coastal State and is thus naturally appurtenant to it, is not a new concept in international law. This subject is reviewed by M. W. Mouton in his work "The Continental Shelf" which was awarded the Grotius Prize of 1952 of the Institute of International Law. On pages 32 and 33 of this work, Mouton says:

> ". . . there are some points relating to the history and origin of the shelf on which geologists are fairly unanimous. The first is, that the shelf belongs to the continents. Krummel, p. 104 (1907) writes: 'The shelf belongs to the body of the continents proper, which find their real limits from the deep sea on its outer margin, the continental-edge, mentioned above.' Umbgrove, p. 97, (1947): 'Almost everywhere the real edge of the continent is situated below sea-level.' Pratt, p. 658: 'The continental shelf may be looked upon as part of a larger earth feature, it is the outer or seaward portion of a great shelving plain which intervenes in the region of the margins of the continents between the continental heights and the oceanic depths.' Murray, in the Science of the Sea (1928), p. 248: ". . . the continental shelf . . . is regarded as belonging to the continental areas.' The Geological Nomenclator (1929) p. 7, gives for Shelf or Continental Shelf, in the

Dutch column (translated): 'The submarine continuation of the continental area up to about the 100-fathom line.' This vision on the nature of the continental shelf has been used by lawyers to apply the doctrine of contiguity or continuity or the principle of propinquity, which will be discussed later.

Already in 1803, de Rayneval (p. 161) argued on geological grounds: '. . . . le fond de la mer, le long des cotes, peut etre considere comme ayant fait partie du continent, et qu il est pour cela considere comme en faisant encore partie.' In the Proclamation of President Truman we read in the fourth paragraph: '. . . since the continental shelf may be regarded as an extension of the land-mass of the coastal nation and thus naturally appurtenant to it . . .' and in the Mexican and Argentine Declarations we find words of the same tenor as in the Peruvian Decree of 1 August, 1947, :'. . . the continental shelf forms a single morphological and geological unity with the continent.' Yepes, who said in the 67th meeting of the International Law Commission (1950), p. 4: 'The first and most important was the rule of continuity, according to which the continental shelf was only the submarine continuation of the territory above water.' And finally Smith, p. 8: 'The shelf is nothing more than an extension of the continent into the sea. It may be argued that this fact alone gives a State paramount right to assert its claim to those resources. It would seem that the principle of propinquity is another way of stating that the geography of the location gives a State a paramount right to such resources.' "

De Rayneval's comment on this subject in his "Institutions du droit de la nature et des gens" (Paris 1803), says:

> "The sea which washes the shores of a state is deemed to form a part thereof; its safety and tranquillity render this property necessary: the sea must play the part of a bulwark. We could add that the bottom of the sea along the coasts can be considered as having formed a part of the continent and is therefore still considered as forming such part.
>
> But the extent of this property is not determined by a uniform rule. Some fix it at thirty leagues, others only at three; others again fix it at the range of a cannon placed upon the shore. Along the southern coasts of France the distance was ten leagues with regard to the moors."

Stefan A. Riesenfeld also reviews this subject in his book on "Protection of Coastal Fisheries Under International Law", published by the Carnegie Endowment for International Peace in 1942. Quoting from Riesenfeld, pages 169 and 170:

> ". . . There exist a number of statutes protecting sedentary fisheries such as pearl and oyster fisheries in the various constituent parts of the British Commonwealth of Nations.
>
> . . . Mention may be made, in the first place, of the Sea Fisheries Act of 1868 which empowered the Irish Commissioners to regulate oyster-fisheries in waters of certain depths within a distance of twenty miles seaward from a straight line between Lambay Island and Carnsore Point.

Ceylon protected its pearl fisheries as early as 1811, when it forbade hovering within an area between the four-and twelve-fathom lines, i.e., a zone stretching at some points to a distance of twenty miles from the shore. The new Pearl Fisheries Ordinance, No. 2 of 1925, applies to 'pearl banks', defined in an annexed schedule as a determinate area between the three-or in some places five-fathom line and the 100-fathom line, which is an area much larger even than the zone protected by the ordinance of 1811.

The various Australian States have a number of statutes protecting oyster and pearl fisheries.

Queensland protects oysters by the "Fish and Oyster Acts, 1914 to 1935," which are applicable apparently only within the 'territorial limits,' and pearls by the 'Pearl shell and Beche-de-Mer Fishery Acts, 1881 to 1931,' which apply to an area extending much beyond three miles and reaching in certain places as far as 250 miles from the coast. New South Wales protects oysters by the 'Fisheries and Oyster Farms Act of 1935,' applicable 'to the territorial limits of New South Wales.' South Australia does the same by her 'Fisheries Act, 1917-1935,' which concerns only fisheries and oyster beds 'near the coast' or on 'Crown lands,' which include according to the statutory definition 'any land under the sea, within the territorial limits of the state.' Tasmania regulates oyster fishing by the Fisheries Act of 1935. Judging from the wording of the statute, the usual jurisdiction over 'any portion of the bed of the sea' (Sec. 12 of the act) is to

be exercised . . . Western Australia possesses three statutes: oyster fisheries are protected by a statute of 1881, pearl-fisheries by the Pearling Act 1912-1935, which does not set any limit within which the Governor may declare a part of the ocean to be one of the carefully protected 'pearl-shell areas' but evidently contemplates a larger belt than the three-mile zones; and fisheries in general by the Fisheries Act, 1905-1921, which does not set any definite limits for the application of the act . . ."

Great Britain has usually adhered to the three-mile rule since she became a great naval power. Her position regarding the ownership of the Continental Shelf beyond three-miles offshore is commented on by Riesenfeld on pages 165-167, as follows:

"In 1928 Great Britain had another important occasion to state her position with respect to the breadth of territorial waters. In a letter of December 6, 1928, directed to the Preparatory Committee for the Conference for the Codification of International Law, the British Government made the following observations:

I

His Majesty's Government in Great Britain agree that the rights which States possess over their territorial waters are rights of sovereignty.

* * * *

"(c) No claim is made by His Majesty's Government in Great Britain to exercise rights over the high seas outside the belt of territorial waters.

There are certain banks outside the three-

mile limit off the coasts of various British dependencies on which sedentary fisheries of oysters, pearl oysters, chanks or beches-de-mer on the sea bottom are practiced, and which have by long usage come to be regarded as the subject of occupation and property. The foregoing answer is not intended to exclude claims to the sedentary fisheries on these banks. The question is understood to relate only to claims to exercise rights over the waters of the high seas.

The Government of India adopted the British memorandum in a letter sent to the Preparatory Committee for the Conference for the Codification of International Law under the date of December 15, 1928. New Zealand did the same by a letter of October 20, 1928. The Commonwealth of Australia submitted her own answer on January 9, 1929, but took substantially the same view as Great Britain. The Australian answer reads in part as follows:

(c) They make no claim to exercise rights over the high seas outside the belt of territorial waters. This answer is made on the understanding that the question relates only to claims to exercise sovereign rights over the waters of the high seas, and does not relate to claims to exercise jurisdiction over sedentary fisheries for pearl oysters and beches-de-mer, etc.; on certain portions of the sea bottom outside the three-mile limit which, by long usage, have come to be regarded as the subject of occupation and property."

The Union of South Africa and Canada took a

view which was in accordance with that of Great Britain (Riesenfeld 168).

Claims to sedentary fisheries and natural resources in the subsoil and seabed in the Continental Shelf are based upon territorial ownership. In this connection Westlake in his work on International Law, Part I, Pages 186 and 187, writes:

> "The case of the pearl fishery is peculiar, the pearls being obtained from the sea bottom by divers, so that it has a physical connection with the stable element of the locality which is wanting to the pursuit of fish swimming in the water. When carried on under state protection, as that off the British Island of Ceylon, or that in the Persian Gulf which is protected by British ships in pursuance of treaties with certain chiefs of the Arabian mainland, it may be regarded as an occupation of the bed of the sea. In that character the pearl fishery will be territorial even though the shallowness of the water may allow it to be practised beyond the limit which the state in question generally fixes for the littoral sea . .. . and the territorial nature of the industry will carry with it, as being necessary for its protection, the territorial character of the sea at the spot."

Mouton in his work on the Continental Shelf, pages 145-146, refers to statements made by Sir Cecil Hurst in the British Yearbook of International Law (1923-1924), as follows:

> "Hurst, p. 40, refers to Hall, who holds the view that appropriation of larger sea areas was given up through abandonment and that mari-

time occupation must be effective in order to be valid (p. 189). Hurst then says: 'If it is disuse and disuse alone which has led to a restriction of the rights of the Sovereign in the bed of the sea, it follows that in cases where there has been effective occupation of a portion of the bed of the sea within the meaning of the principle enunciated by Hall and such occupation still continues, there has been no abandoning of the rights of ownership, and consequently the ownership still continues. Assuming that this proposition is sound, it removes a difficulty which has found expression in writings on international law as regards sedentary fisheries.'

Hall, however, speaks about the sea and Hurst about the seabed.

It is true, as Oppenheim, p. 575, says that 'there has been a tendency in the past to assume that the surface of the bed upon which the open sea rests must be likened in legal condition to the waters of the open sea themselves.' But Oppenheim criticizes this view when he continues to say that the reasons for 'the abandonment of the former claims to occupy the waters of the open sea . . . do not apply to the sea-bed . . .'

On p. 576 he says that 'although it is traditional to base some of these cases on the ground of prescription . . . that a State may by strictly local occupation acquire, for sedentary fisheries and for other purposes, sovereignty and property in the surface of the seabed, provided that in so doing it in no way interferes with freedom

of navigation, perhaps we should add, with the breeding of free swimming fish'."

Reference may also be made to the comment made by Mouton in the "Continental Shelf," page 154:

"The Under Secretary of State for Foreign Affairs said about this question in the British Parliament in 1923, (column 1261):

'. . . pearl fisheries stand on a different footing to the ordinary kind of fishing in the waters of the sea, because the banks where the pearl oysters lie must be treated as part of the bed of the sea. For many centuries the pearl-banks off the coast of Ceylon have been claimed as subject to sovereignty of the rulers of the neighboring territory and subject therefore also to their control . . .' and (column 1262): '. . . where they are situated under the high seas the claim to sovereignty and control is limited in extent to the area of the banks, and does not affect the rights of navigation or of ordinary fishing in the waters over the banks."

There are certain banks outside the 3-mile limit off the coasts of various British dependencies on which sedentary fisheries of oysters, pearl oysters, chanks or beches-de-mer on the sea-bottom are practised, and which have by long usage come to be regarded as the subject of occupation and property . . ."

Colombos, in his "International Law of the Sea" (1954), Third Edition, Section 353, page 306 and 307, makes the following statements as to the right of the coastal State to claim the ownership of portions of the Continental Shelf occupied by it:

§ 353. Protection of sedentary fisheries. -

A similar conception of a State's right to protect its 'sedentary' fisheries is to be traced in the claim which has been asserted by the British Government to the pearl fisheries off the Gulf of Manaar and Palk's Bay, commonly referred to as the "Ceylon fisheries" and which extend some eighteen miles beyond territorial waters. Vattel had already asked himself the question 'Who can doubt that the pearl fisheries of Bahrein and of Ceylon can lawfully fall under ownership?' It must, however, be pointed out that at the time Vattel wrote his famous book the doctrine of the freedom of the seas had not as yet been generally acknowledged as a principle of international law. Much more modern writers have rested the justification of the British claims on the occupation of the bed of the sea which, it is contended, is capable of being subjected to a State's ownership . . .

Sir Cecil Hurst, in a remarkable article already referred to, concluded that such claims are valid provided they conform to certain conditions, namely (i) the coastal State must have exercised effective occupation of, and jurisdiction over, the sedentary fisheries on the sea-bed for a long period; (ii) there must be no interference with freedom of navigation in the waters above the sea-bed; and (iii) there must be no interference with the right to catch swimming fish in the waters above the sea-bed. In their comments on the Revised Draft Articles on the Continental shelf prepared by the International Law Commission in 1951, the British Government stated

that they considered Sir Cecil Hurst's article as correctly stating the law on sedentary fisheries and that they were in entire agreement with the author's conclusion that 'the claim to the exclusive ownership of a portion of the bed of the sea and to the wealth which it produces in the form of pearl, oysters, chanks, coral, sponges or other *fructus* of the soil is not inconsistent with the universal right of navigation in the open sea or with the common right of the public to fish in the high seas.' The drafting of article 3 by the International Law Commission seems to be in accordance with the above conclusions: 'The regulation of sedentary fisheries may be undertaken by a State in areas of the high seas contiguous to the territorial sea where such fisheries have long been maintained and conducted by nationals of that State. Where the coastal State has in the past permitted non-nationals to participate in the fishing, it has no right to exclude them in the future. Such regulations, however, will not affect the general status of the areas as high seas. Sedentary fisheries must not result in substantial interference with navigation.'

§ 353a. Australian pearl fisheries.

The claim could be relied upon with regard to the pearl and beche-de-mer fisheries off Western Australia and Queensland which have been the subject of legislative enactments by both these Australian States, although they stretch out considerably beyond territorial waters."

A clear statement of International law on this

subject is contained in *Hackworth's Digest of International Law*, Vol II, pages 674-675, as follows:

"Vattel's Statement: 'Who can doubt that the pearl fisheries of Bahrein and Ceylon may lawfully become property?' ceases to cause any difficulty to even the stoutest upholders of the principle that the limits of the territorial belt are not more than three miles if it is realized that the exclusive right to the pearls to be obtained from the banks flowed from the ownership of the bed of the sea where the banks were situated, and not from any claim to maritime jurisdiction over the waters . . .

". . . Wherever it can be shown that particular oyster beds, pearl banks, chank fisheries, sponge fisheries or whatever may be the particular form of sedentary fishery in question outside the three-mile limit have always been kept in occupation by the Sovereign of the adjacent land, ownership of the soil of the bed of the sea where the fishery was situated may be presumed, and the exclusive right to the produce to be obtained from these fisheries may be based on their being a produce of the soil. Ownership of the soil by the Sovereign of the country under such circumstances must carry with it the right to legislate for the soil so owned and for the protection of the wealth to be derived from it, and no doubt need be felt as to the binding force of the various enactments which have been issued for the protection of these sedentary fisheries outside the three-mile limit . . .

The maintenance of a State's property rights in special areas outside the three-mile limit when

more extensive general claims to sovereignty, jurisdiction and property were abandoned is in no way inconsistent with the principles laid down by Oppenheim, that the sub-soil beneath the bed of the open sea outside the marginal belt of territorial waters is a no man's land, property in which can be acquired on the part of the littoral State through occupation starting from the sub-soil beneath the bed of the territorial maritime belt. Tunnelling in the sub-soil for the purposes of mining or communications seems to be the only aspect of the problem which Oppenheim had in mind, but the principles he lays down are in no way inconsistent with the recognition of a right of exclusive ownership arising from long and undisputed occupation of sedentary fisheries lying on the surface of the bed of the sea."

The following discussion on this subject is taken from Volume 35 of the American Journal of International Law (1941), pages 518-19:

"... But there is another type of claim-riparian exploitation or licensing of the sedentary fisheries or subsoil mines or petroleum reserves close to the shore but outside the three-mile limit. Here other considerations enter the problem. Could a country tolerate a permanent foreign occupation or stationary works at its front door, especially if the operations occur on a shallow bank or shelf? Practical considerations would seem to dictate a negative answer. In English history the Crown laid claim to minerals won from mines and workings below the low-water mark under the open sea adjacent to the coast but outside the three-

mile limit. So, the pearl fisheries of Bahrein and Ceylon, extending many miles from shore, have for centuries been regulated by local ordinances of the riparian States, and Vattel seems to have supported the ancient claim of monopoly in these sedentary fisheries. The claim may be said to rest on several theories—the extension of the land to the shallow banks, the long historical use and presumption of acquiescence, the physical occupation, and the special fact that Palk's Bay, if not the Gulf of Mannar, which divides India from Ceylon, may be deemed a constituent portion of the British dominions. Even so, there would be no right to interfere with navigation and surface fishing beyond the three-mile limit . . ."

The foregoing authorities clearly indicate that when a nation or State has possessed and occupied the bed of the Continental Shelf for a long period of time, the sub-soil and sea-bed become the property, and constitute a part of the territorial limits of the coastal State, which has thus effectively occupied it.

C. ACTS OF LOUISIANA LEGISLATURE AND OF CONGRESS REDEFINING LOUISIANA BOUNDARIES

Louisiana's original southern boundary as described in its Act of Admission of April 8, 1812 (2 Stat. 701, 702; 2 Stat. 708) is "to the Gulf of Mexico; thence bounded by the said Gulf to the place of beginning, including all islands within three leagues of the coast." In 1938 Louisiana passed the first Act which declared the extent of its boundaries in the Gulf of

Mexico. In this Act it recited that its boundary has been fixed three leagues from coast in the Act of Admission, but that in view of the increased range of cannon the State was entitled to boundaries, and the Legislature declared that the boundaries extended 27 miles seaward into the Gulf.

Louisiana later, in 1954, passed Act number 33, which redefined the boundaries of the State as three leagues from the coast line, or line dividing the inland waters from the open sea, and declared this to be the boundaries of the State. Pertinent provisions of the Acts of 1938 and of 1954 are set forth hereinbelow, as well as the Acts of Congress which support the redefined boundary set forth in the Louisiana Act of 1954

1. LOUISIANA ACT No. 55 OF 1938

(La. Rev. Stats. 49:1)

AN ACT

To declare the sovereignty of Louisiana along its seacoast and to fix its present seacoast boundary and ownership.

Whereas dominion, with its consequent use, ownership and jurisdiction, over its marginal waters by a State has found support because it is the duty of a State to protect its citizens whose livelihood depends on fishing, or taking from said marginal waters the natural products they are capable of yielding; also,

has found support in that sufficient security must exist for the lives and property of the citizens of the State;

. . .

Whereas, by the Act of Congress of February 20th, 1811, by which the State of Louisiana was admitted to the United States as a State, the southern boundary of Louisiana was fixed as follows: 'thence bounded by the said gulf to the place of beginning, including all islands within three leagues of the coast';

Whereas, therefore, the gulfward boundary of Louisiana is already located in the Gulf of Mexico three leagues distant from the shore . . .

Whereas, a State can define its limits on the sea;

. . .

Whereas, the State of Louisiana, including all parts thereof and all territory that may be added thereto, forms a part of the United States of America, over which the said United States is authorized to exercise and exercises such powers and jurisdiction as the said United States is authorized by the Constitution of the United States to exercise thereover;

Section 1. Be it enacted by the Legislature of Louisiana, That the gulfward boundary of the State of Louisiana, is hereby fixed and declared to be a line located in the Gulf of Mexico parallel to the three-mile limit as determined according to said ancient principles of international law, which gulfward boundary is located twenty-four marine miles further out in the Gulf of Mexico than the said three-mile limit.

Section 2. That, subject to the right of the government of the United States to regulate foreign and in-

terstate commerce under Section 8 of Article 1 of the Constitution of the United States, and to the power of the government of the United States over cases of admiralty and maritime jurisdiction under Section 2 of Article 3 of the Constitution of the United States, the State of Louisiana has full sovereignty over all of the waters of the Gulf of Mexico and of the arms of the Gulf of Mexico within the boundaries of Louisiana, as herein fixed, and over the beds and shores of the Gulf of Mexico and all arms of the said Gulf within the boundaries of Louisiana, as herein fixed.

Section 3. That the State of Louisiana owns in full and complete ownership the waters of the Gulf of Mexico and of the arms of the said Gulf and the beds and shores of the Gulf of Mexico and the arms of the Gulf of Mexico, including all lands that are covered by the waters of the said Gulf and its arms either at low tide or high tide, within the boundaries of Louisiana, as herein fixed.

Section 4. That this Act shall never be construed as containing a relinquishment by the State of Louisiana of any dominion sovereignty, territory, property or rights that the State of Louisiana already had before the passage of this Act.

Approved by the Governor: June 30, 1938."

2. LOUISIANA ACT No. 33 OF 1954

"AN ACT

To amend and re-enact Section 1 of Title 49 of the

Louisiana Revised Statutes of 1950 relative to state water boundaries; gulfward boundary.

Whereas, under authority of Section 3 of Article IV of the United States Constitution, the United States Congress admitted Louisiana as a State into the Union in April, 1812, and fixed its gulfward boundary at 3 leagues from coast.

Whereas, in compliance with Acts of Congress of February 10, 1807, 2 Stat. 413, and of February 19, 1895, 28 Stat. 672, 33 U.S.C. 151, the coast line of the State of Louisiana was officially designated and defined by bearings, light-houses, buoys and coast objects, as shown in Section 1 herein;

Whereas, the United States Supreme Court has held that the waters inside of the coast line designated and defined under said Act of February 19, 1895, are "as much a part of the inland waters of the United States within the meaning of this Act as the harbor within the entrance" and another Federal Court held that said Act "was for the purpose of defining the inland waters of the United States."

Whereas, the United States Congress, by its "Tidelands" Act, approved May 22, 1953, 67 Stat. 32, recognized and confirmed State ownership of the lands beneath navigable waters within the State's boundaries, and the natural resources, including oil, gas, and all other minerals, and fish, shrimp, oysters, and other marine animal and plant life within such lands and waters; and said Tidelands Act adopted State boundaries in the Gulf of Mexico as they existed at

the time such State became a member of the Union not more than 3 marine leagues into the Gulf of Mexico from the coast line, which "coast line" is defined in said Act as that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters; and

Whereas, the State of Louisiana owns these submerged lands and natural resources within such land and waters in trust for its people, and the economic welfare of the State and the public services dependent upon the State revenues to be derived from these valuable natural resources require that the State's historic boundary be redefined to avoid confusion and to clarify the situation with regard thereto.

Be it enacted by the Legislature of Louisiana:

Section 1. Section 1 of Title 49 of the Louisiana Revised Statutes of 1950 is hereby amended and reenacted to read as follows:

§ 1. Gulfward boundary. The historic gulfward boundary of the State of Louisiana extends a distance into the Gulf of Mexico 3 marine leagues from coast.

The coast or coast line of the State of Louisiana is accepted and approved as designated and defined in accordance with applicable Acts of Congress, as follows: From Ship Island Lighthouse to Chandeleuer Lighthouse; thence in a curved line following the general trend of the seaward, high-water shore lines of the Chandeleuer Islands to the Southwesternmost extremity of Errol Shoal; thence to Pass-a-Loutre lighted

whistle buoy 4 to South Pass lighted whistle buoy 2; thence to Southwest Pass entrance mid-channel lighted whistle buoy; thence to Ship Shoal lighthouse; thence to Calcasieu Pass lighted whistle buoy 1; thence to Sabine Pass lighted whistle buoy 1, as designated and defined under authority of the Act of Congress of February 19, 1895, 28 Stat. 672, 33 U.S.C. 151 as amended, and is shown on the attached chart showing the coast line of the State marked thus - - - and showing the State gulfward boundary by a solid line 3 marine leagues from coast, which chart shall be paraphed by the Speaker of the House of Representatives, the President of the Senate and by the Governor to be identified herewith.

Section 2. That all laws or parts of laws in conflict herewith be and they are hereby repealed with the exception that the designation on the attached plat of the common boundaries of the coastal parishes of the State of Louisiana shall not be taken or interpreted as in any manner changing or affecting the interior or inland boundaries of any said coastal parishes as now existing or fixed by applicable State laws, nor shall said plat be taken or construed, as intending to affect the common maritime boundary between this State and the States of Mississippi and Texas.

Approved by the Governor: June 21, 1954.

3. ACT OF CONGRESS OF FEBRUARY 10, 1807 PROVIDING FOR A SURVEY OF THE COASTS OF THE UNITED STATES

(2 Stat. 413)

AN ACT

To provide for surveying the coasts of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States shall be, and he is hereby authorized and requested, to cause a survey to be taken of the coasts of the United States, in which shall be designated the islands and shoals, with the roads or places of anchorage, within twenty leagues of any part of the shores of the United States; and also the respective courses and distances between the principal capes, or head lands, together with such other matters as he may deem proper for completing an accurate chart of every part of the coasts within the extent aforesaid.

4. ACT OF CONGRESS OF FEBRUARY 19, 1895 DESIGNATING THE LINES DIVIDING THE HIGH SEAS AND THE INLAND WATERS

(28 Stat. 672, 33 U.S.C. 151)

Section 151. **Demarcation of high seas lines.** The Secretary of Commerce is hereby authorized, empowered and directed from time to time to designate and define by suitable bearings or ranges with lighthouses, light vessels, buoys or coast objects, the lines dividing

the high seas from rivers, harbors and inland waters. (Feb. 19, 1895, c. 102, § 2, 28 Stat. 672; Feb. 14, 1903, c. 552, 32 Stat. 829; Mar. 4, 1913, c. 141, 37 Stat. 736.)

5. ACT OF CONGRESS OF JULY 17, 1939, RELATING TO THE REGULATION OF STEAM VESSELS OF THE UNITED STATES

(53 Stat. 1049, 60 Stat. 1097, 46 U.S.C. 224a (12))

"(12) Where used in this section—

(a) the term 'high seas' means all waters outside the line dividing the inland waters from the high seas, as defined in section 151 of Title 33;"

D. LOUISIANA'S HISTORIC BOUNDARIES — TREATIES AND DOCUMENTS RELATING THERETO

1. PROCLAMATION OF LA SALLE, APRIL 9, 1682

In 1933 the Department of the Interior printed an historical sketch from the files of the General Land Office in commemoration of the 150th Anniversary of the Louisiana Purchase. This sketch is entitled "The Louisiana Purchase" and was reprinted by the Government Printing Office in 1955. It reproduces La Salle's Proclamation made at the mouth of the Mississippi River on April 9, 1682 when he took possession of the great expanse of the Louisiana territory on behalf of France. His Proclamation appears on page 4 of the "Louisiana Purchase," as follows:

"In the name of the most high, mighty, invincible, and victorious prince, Louis the Great,

by the grace of God, King of France and of Navarre, fourteenth of that name, this ninth day of April, one thousand six hundred and eighty-two, I, in virtue of the commission of His Majesty which I hold in my hand, and which may be seen by all whom it may concern, have taken, and do now take, in the name of His Majesty and of his successors to the crown, possession of this country of Louisiana, the seas, harbors, ports, bays, adjacent straits, and all the nations, people, provinces, cities, towns, villages, mines, minerals, fisheries, streams, and rivers comprised in the extent of said Louisiana, from the mouth of the great river St. Louis on the eastern side, otherwise called Ohio, Aligin, Sipore, or Chukagona, and this with the consent of the Chaonanons, Chickachas, and other people dwelling therein, with whom we have made alliance; as also along the river Colbert, or Mississippi, and rivers which discharge themselves therein, from its source, beyond the country of the Kious or Nadoucessions, and this with their consent, and with the consent of the Motantes, Illinois, Mesiganeas, Natches, Koroas, which are the most considerable nations dwelling therein, with whom also we have made alliance, either by ourselves or by others in our behalf, as far as its mouth in* the sea, or Gulf of Mexico, about the twenty-seventh degree of the elevation of the North Pole and also to the mouth of the river of Palms; upon the assurance which we

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*The translation in the Louisiana Purchase reads "by the sea" but the word in the French is "dans" which always means in or into in French. See History of North America by Guy Carlton Lee, Vol. III, page 190, 191.

have received from all these nations that we are the first Europeans who have descended or ascended the said river Colbert; hereby protesting against all who may in future undertake to invade any or all of these countries, people, or lands, above described, to the prejudice of the rights of His Majesty, acquired by the consent of the nations herein named. Of which, and all that can be needed, I hereby take to witness those who hear me and demand an act of the notary as required by law."

The Louisiana Purchase sketch then makes the following statement with reference to the title acquired by France by virtue of LaSalle's Proclamation (Page 4):

"Title to French territory in the Mississippi Valley and along the Gulf of Mexico was based upon this voyage and proclamation of LaSalle. These acts of LaSalle were, in fact, the foundation of French ownership, and have been so considered by all nations since 1682. The Louisiana thus claimed embraced two areas of continguous territory — first, the territory drained by the Mississippi River, with all of its tributaries, and second, the territory between the Mississippi River and the River of Palms. The wording of the proclamation is simple and direct, and its meaning seems incapable of distortion or of being misunderstood..."

Further reference is made to LaSalle's Proclamation in a letter of March 12th, 1818 from John Quincy Adams, Secretary of State to Don Louis de Onis, En-

voy from Spain, and is reproduced in American State Papers (2d series), Vol. IV, pages 470-474, excerpts from which follow:

". . . . three principles, sanctioned alike by immutable justice and the general practice of the European nations which have formed settlements and held possessions in this hemisphere; and, by the application of which to the facts also stated in their note, this question of the western boundary ought then to have been, and eventually must be settled. These principles were—

First. 'That when any European nation takes possession of any extent of seacoast, that possession is understood as extending into the interior country to the sources of the rivers empting within that coast, to all their branches, and the country they cover, and to give it a right in exclusion of all other nations to the same.'

Secondly. 'That whenever one European nation makes a discovery, and takes possession of any portion of this continent, and another afterwards does the same at some distance from it, where the boundary between them is not determined by the principle above mentioned, the middle distance becomes such of course.'

Thirdly. 'That whenever any European nation has thus acquired a right to any portion of territory on this continent, that right can never be dimished or affected by any other Power, by virtue of purchases made, by grants or conquests of the natives within the limits thereof.'

The facts stated in this last mentioned note,

and to which these principles were applied in support of the claim of the United States, under the cession of Louisiana by France to them, were—

1. That the Mississippi, in its whole length to the ocean, was discovered by French subjects from Canada, in 1683.

2. That LaSalle, a Frenchman, with a commission and authority from Louis XIV., discovered by the bay of St. Bernard, and formed a settlement there on the western side of the river Colorado, in the year 1685, and that the possession thus taken in the bay of St. Bernard, in connection with that on the Mississippi, had always been understood, as of right it ought, to extend to the Rio Brava.

3. That the boundary, thus founded upon possession, was described as forming the limits of Louisisana, in the grant by Louis XIV, to Crozat, in 1712.

4. That it was supported by the testimony of the historical writers, Du Pratz and Champigny; by an historical and political memoir on Louisiana, written by the Count De Vergennes, the minister of Louis XIV; by a chart of Louisiana published in 1762, by Don Thomas Lopez, geographer to the King of Spain; and by a map of De Lisle, of the Academy of Sciences at Paris, revised and republished there in 1782 . . ."

. . . Of all the heroic enterprises which, in the sixteenth and seventeenth centuries, signalized the discoveries of Europeans upon this continent, there is not one of which the evidence is

more certain, authentic, and particular, than of those of LaSalle . . .

. . . . . On this journey he was basely assassinated on the 19th of March, 1687, by two of his own men, and left a name among the illustrious discoverers of the new world, second only to that of Columbus, with whose history and adventures his own bear in many particulars a striking resemblance . . .

". . . The Mississippi, from near its source to the ocean, had been discovered by him in an expedition meditated by him for many years before, for which he had obtained the authority from Louis XIV., through the influence and patronage of Colbert. The expedition of Joliet, in 1673, Hennepin says, was only an envious rival attempt to forestal the great design which was even then known to be intended by LaSalle, and for which he had already been making laborious and expensive preparations. Joliet reached the Mississippi, and returned without making any other discovery or any settlement; but LaSalle's undertaking has every characteristic of sublime genuis, magnanimous enterprise, and heroic execution. To him, and to him alone, the people of this continent are indebted for the discovery, from its source to the ocean, of the Mississippi, the father of the floods; and of the numberless millions of freemen destined in this and future ages to sail on his bosom, and dwell along his banks, and those of his tributary streams, there is not one but will be deeply indebted for a large portion of the comforts and enjoyments of life to the genius and energy of LaSalle . . ."

2. SPANISH POSSESSION OF LOUISIANA — TREATY OF MADRID SIGNED AT THE ESCURIAL, OCTOBER 28, 1790

Journal of the House of Commons
December 3, 1790, Page 30

By secret treaty executed at Fontainebleau on November 3, 1762, France ceded the Louisiana territory to Spain. Later, by a secret treaty of St. Ildefonso signed between the same parties October 1, 1800, the Louisiana territory was retroceded by Spain to France. During this period of Spanish possession from 1762 to 1800 England and Spain entered into a treaty whereby each recognized the territorial waters of the other in the Western Hemisphere as extending 10 leagues seaward from their shores. This agreement and recognition is embodied in the treaty of Madrid signed at the Escurial on July 24, 1790, and reads in part as follows:

" . . . Their Britannick and Catholick Majesties, being desirous of terminating, by a speedy and solid Agreement, the Differences which have lately arisen between the Two Crowns, have judged that the best Way of attaining this salutary Object would be that of an amicable Arrangement; which, setting aside all retrospective Discussion of the Rights and Pretensions of the Two Parties, should fix their respective Situation for the future on a Basis conformable to their true Interests, as well as to the mutual Desire with which their said Majesties are animated, of

establishing with each other, in every Thing, and in all Places, the most perfect Friendship, Harmony, and good Correspondence . . .

Article III.

And, in order to strengthen the Bonds of Friendship, and to preserve in future a perfect Harmony and good Understanding between the Two contracting Parties, It is agreed, That their respective Subjects shall not be disturbed or molested, either in navigating or carrying on their Fisheries in the Pacific Ocean, or in the South Seas, or in landing on the Coasts of those Seas, in Places not already occupied, for the Purpose of carrying on their Commerce with the Natives of the Country, or of making Settlements there; the whole subject, nevertheless, to the Restrictions and Provisions specified in the Three following Articles.

Article IV.

His Britannick Majesty engages to take the most effectual Measures to prevent the Navigation and Fishery of His Subjects in the Pacific Ocean, or in the South Seas, from being made a Pretext for illicit Trade with the Spanish Settlements; and, with this View, it is moreover expressly stipulated, that British Subjects shall not navigate, or carry on their Fishery, in the said Seas, within the Space of Ten Sea Leagues from any Part of the Coasts already occupied by Spain.

Article V.

It is agreed, That, as well in the Places which are to be restored to the British Subjects, by vir-

ture of the First Article, as in all other Parts of the Northwestern Coasts of North America, or of the Islands adjacent, situated to the North of the Parts of the said Coasts already occupied by Spain, wherever the Subjects of either of the Two Powers shall have made Settlements since the Month of April 1789, or shall hereafter make any, the Subjects of the other shall have free Access, and shall carry on their Trade without any Disturbance or Molestation."

Article VI.

It is further agreed, with respect to the Eastern and Western Coasts of South America, and to the Islands adjacent, That no Settlement shall be formed hereafter, by the respective Subjects, in such Parts of those Coasts as are situated to the South of those Parts of the same Coasts, and of the Islands adjacent, which are already occupied by Spain: Provided that the said respective Subjects shall retain the Liberty of landing on the Coasts and Islands so situated, for the Purposes of their Fishery, and of erecting thereon Huts, and other temporary Buildings, serving only for those Purposes."

3. TREATY FOR THE CESSION OF LOUISIANA FROM FRANCE TO THE UNITED STATES, SIGNED AT PARIS, APRIL 30, 1803

8 Stat. 200

Article I

"Whereas, by the Article the third of the Treaty concluded at St. Idelfonso the 9th Vendemiaire, an 9 (1st October, 1800), between the First

Consul of the French Republic and his Catholic Majesty, it was agreed as follows:

'His Catholic Majesty promises and engages on his part, to cede to the French Republic, six months after the full and entire execution of the conditions and stipulations herein relative to his Royal Highness the Duke of Parma, the Colony or Province of Louisiana, with the same extent that it now has in the hands of Spain, and that it had when France possessed it; and such as it should be after the treaties subsequently entered into between Spain and other States.'

And whereas in pursuance of the treaty and particularly of the third article, the French Republic has an incontestible title to the domain and to the possession of the said territory: The First Consul of the French Republic desiring to give to the United States a strong proof of his friendship, doth hereby cede to the said United States, in the name of the French Republic, for ever and in full Sovereignty, the said territory with all its rights and appurtances, as fully and in the same manner as they have been acquired by the French Republic, in virtue of the above-mentioned treaty concluded with his Catholic Majesty.

Article II

In the cession made by the preceding article are included the adjacent islands belonging to Louisiana, all public lots and Squares, vacant lands, and all public buildings, fortifications, barracks, and other edifices which are not private property . . .

Article III

The inhabitants of the ceded territory shall be incorporated in the Union of the United States, and admitted as soon as possible, according to the principles of the Federal constitution, to the enjoyment of all the rights, advantages and immunities of citizens of the United States; and in the meantime they shall be maintained and protected in the free enjoyment of their liberty, property and in the Religion which they profess."

4. ACT OF CONGRESS OF MARCH 26, 1804 CREATING THE TERRITORY OF ORLEANS

2 Stat. 283

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, That all that portion of country ceded by France to the United States, under the name of Louisiana, which lies south of the Mississippi territory, and of an east and west line to commence on the Mississippi river, at the thirty-third degree of north latitude, and to extend west to the western boundary of the said cession, shall constitute a territory of the United States, under the name of the territory of Orleans; the government thereof shall be organized and administered as follows:

* * * *

Sec. 12. The residue of the province of Louisiana ceded to the United States, shall be called the district of Louisiana, the government whereof shall be organized and administered as follows . . .

5. ACT OF CONGRESS OF FEBRUARY 20, 1811 TO ENABLE THE PEOPLE OF THE TERRITORY OF ORLEANS TO FORM A CONSTITUTION AND STATE GOVERNMENT

2 Stat. 641

SECTION 1 — BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, That the inhabitants of all that part of the territory or country ceded under the name of Louisiana, by the treaty made at Paris on the thirtieth day of April, one thousand eight hundred and three, between the United States and France, contained within the following limits, that is to say: beginning at the mouth of the river Sabine, thence by a line to be drawn along the middle of the said river, including all islands to the thirty-second degree of latitue; thence due north, to the northernmost part of the thirty-third degree of north latitude; thence along the said parallel of latitude to the river Mississippi; thence down the said river to the river Iberville; and from thence along the middle of the said river and lakes Maurepas and Pontchartrain, to the gulf of Mexico; thence bounded by the said gulf to the place of beginning; including all islands within three leagues of the coast, be, and they are hereby authorized to form for themselves a constitution and state government, and to assume such name as they may deem proper, under the provisions and upon the conditions herein after mentioned.

6. ACT OF CONGRESS DATED APRIL 8, 1812 FOR THE ADMISSION OF THE STATE OF LOUISIANA INTO THE UNION

2 Stat. 701

. . . BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, That the said state shall be one, and is hereby declared to be one of the Union on an equal footing with the original states, in all respects whatever, by the name and title of the state of Louisiana: *Provided*, that it shall be taken as a condition upon which the said state is incorporated in the Union, that the river Mississippi, and the navigable rivers and waters leading into the same, and into the gulf of Mexico, shall be common highways, and for ever free, as well to the inhabitants of the said state as to the inhabitants of other states and the territories of the United States, without any tax, duty, impost or toll therefor, imposed by the said state; and that the above condition, and also all other the conditions and terms contained in the third section of the act, the title whereof is herein before recited, shall be considered, deemed and taken, fundamental conditions and terms, upon which the said state is incorporated in the Union.

Sec. 2. AND BE IT FURTHER ENACTED, That until the next general census and apportionment of representatives, the said state shall be entitled to one representative in the House of Representatives of

the United States; and that all the laws of the United States, not locally inapplicable, shall be extended to the said state, and shall have the same force and effect within the same, as elsewhere within the United States...

7. CONSTITUTION OF LOUISIANA, ADOPTED JANUARY 22, 1812

(Preamble)

We, the Representatives of the People of all that part of the Territory or country ceded under the name of Louisiana, by the treaty made at Paris, on the 30th day of April, 1803, between the United States and France, contained in the following limits, to wit; beginning at the mouth of the river Sabine, thence by a line to be drawn along the middle of said river, including all its islands, to the thirty second degree of latitude—thence due north to the Northernmost part of the thirty third degree of north latitude—thence along the said parallel of latitude to the river Mississippi—thence down the said river to the river Iberville, and from thence along the middle of the said river and lakes Maurepas and Pontchartrain to the Gulf of Mexico—thence bounded by the said Gulf to the place of beginning, including all islands within three leagues of the coast—in Convention Assembled by virtue of an act of Congress, entitled "an act to enable the people of the Territory of Orleans to form a constitution and State government and for the admission of said State into the Union on an equal footing with the original States, and for

other purposes;" In order to secure to all the citizens thereof the enjoyment of the right of life, liberty and property, do ordain and establish the following constitution or form of government, and do mutually agree with each other to form ourselves into a free and independent State, by the name of the State of Louisiana.

E. GULF OF MEXICO — SOVEREIGNTY OVER TERRITORIAL WATERS

1. PROCLAMATION OF LA SALLE APRIL 9, 1682

(The "Louisiana Purchase," page 4)

LaSalle's Proclamation is set forth in Section C of this Appendix hereinabove and reference is made to it here since it has a particular bearing on the extent of territorial waters claimed and possessed by France in the Gulf of Mexico. In that Proclamation LaSalle took possession of the Louisiana Territory extending into the Gulf of Mexico to the 27th degree of elevation of the North Pole

2. TREATY OF MADRID, DECEMBER 3, 1790

In this Treaty Great Britain and Spain agreed that sovereignty over the territorial waters in North and South America would extend seaward a distance of 10 leagues from their shores. Excerpts from this Treaty appear in Section C of this Appendix and need not be repeated here.

3. UNITED STATES & SPAIN—TREATY OF FRIENDSHIP, LIMITS AND NAVIGATION, SIGNED AT SAN LORENZO et REAL, OCTOBER 27, 1795

(8 Stat. 138, 2 Miller's Treaties And Other International Acts Of The United States of America, page 318)

"Art. IV

It is likewise agreed that the Western boundary of the United States which separates them from the Spanish Colony of Louisiana, is in the middle of the channel or bed of the River Mississippi, from the Northern boundary of the said States to the completion of the thirty first degree of latitude North of the Equator. And his Catholic Majesty has likewise agreed that the navigation of the said river in its whole breadth from its source to the ocean shall be free only to his subjects, and the citizens of the United States, unless he should extend this privilege to the subjects of other powers by special convention."

"Art. VI

Each party shall endeavour, by all means in their power, to protect and defend all vessels and other effects belonging to the citizens or subjects of the other, which shall be within the extent of their jurisdiction by sea or by land * * * *"

4. UNITED STATES AND SPAIN—TREATY OF AMITY SETTLEMENT AND LIMITS SIGNED AT WASHINGTON, FEBRUARY 22, 1819

(8 Stat. 252, 3 Miller's Treaties)

"Art. 2

His Catholic Majesty cedes to the United States, in full property and sovereignty, all the territories which belong to him, situated to the Eastward of the Mississippi, known by the name of East and West Florida. The adjacent islands dependent on said provinces, all public lots and Squares, vacant Lands, public edifices, fortifications, barracks and other buildings, which are not private property, archives and documents, which relate directly to the property and sovereignty of said provinces, are included in this article. * * *

"Art. 3

The boundary line between the two countries, west of the Mississippi, shall begin on the Gulph of Mexico, at the mouth of the River Sabine in the sea, continuing north, along the western bank of that River, to the 32d degree of latitude * * *"

The objects of paramount consideration in the making of the foregoing Treaty are thus stated in the memoirs of John Quincy Adams, Volume IV, page 290 referred to in the notes of the Treaty appearing on Page 45 of Volume 3, Miller's Treaties. The following is quoted from the memoirs of President Adams.

"* * * The removal of all apprehension of

a war with Spain, the consolidation of our territorial possessions, *the command of the Gulf of Mexico, the recognized extension of the South Sea*, and the satisfaction of so large an amount of the claims of our citizens upon Spain, were objects of such paramount consideration, and the attainment of them would raise our standing and character so high in the estimate of the European powers, that the land was of very trifling comparative consequence. * * *" (Emphasis Supplied)

5. UNITED STATES RECOGNITION OF BOUNDARIES OF THE TEXAS REPUBLIC

a. Constitution of Texas, Adopted March 17, 1836 —1 Gammel's Laws of Texas 1077

"That no inconvenience may arise from the adoption of this constitution, it is declared by this convention that all laws now in force in Texas, and not inconsistent with this constitution, shall remain in full force until declared void, repealed, altered, or expire by their own limitation."

b. Act of Congress Of The Republic of Texas Defining the Boundaries of The Republic of Texas — 1 Gammel's Laws of Texas, 1193-1194.

"Sec. 1. Be it enacted by the senate and house of representatives of the republic of Texas, in congress assembled, That from and after the passage of this act, the civil and political jurisdiction of this republic be, and is hereby declared to extend to the following boundaries, to-wit: beginning at the mouth of the Sabine river, and running west along the Gulf

of Mexico three leagues from land, to the mouth of the Rio Grande, thence up the principal stream of said river to its source, thence due north to the forty-second degree of north latitude, thence along the boundary line as defined in the treaty between the United States and Spain, to the beginning: and that the president be, and is hereby authorized and required to open a negotiation with the government of the United States of America, so soon as in his opinion the public interest requires it, to ascertain and define the boundary line as agreed upon in said treaty."

c. *Special Message From President Andrew Jackson To The United States House of Representatives of December 22, 1836. — Congressional Globe, 24th Cong. 2nd Session, page 45*

"the title of Texas to the territory she claims is identified with her independence."

d. *Resolution of United States Senate March 1, 1837 Recognizing The Independence of Texas — Congressional Globe, 24th Cong. 2nd Session, pages 45, 83.*

"Resolved, that the State of Texas having established and maintained an independent Government, capable of performing those duties, foreign and domestic, which appertain to independent Governments, and it appearing that there is no longer any reasonable prospect of successful prosecution of the war by Mexico against said State it is expedient and proper and in conformity with the laws of nations and the

practice of this Government in like cases, that the independent political existence of said state be acknowledged by the Government of the United States."

e. Treaty For Marking The Boundary Between The United States of America and the Republic of Texas Signed at Washington April 25, 1838

8 Stat. 511, 4 Miller's Treaties 133.

"Convention between the United States of America and the Republic of Texas, for marking the boundary between them.

Whereas the treaty of limits made and concluded on the twelfth day of January, in the year of our Lord one thousand eight hundred and twenty-eight between the United States of America on the one part and the United Mexican States on the other, is binding upon the Republic of Texas, the same having been entered into at a time when Texas formed a part of the said United Mexican States:

And whereas it is deemed proper and expedient in order to prevent future disputes and collisions between the United States and Texas in regard to the boundary between the two countries as designated by the said treaty, that a portion of the same should be run and marked without unnecessary delay:

The President of the United States has appointed John Forsyth their plenipotentiary, and the President of the Republic of Texas has appointed Memucan Hunt its plenipotentiary:

And the said plenipotentiaries having ex-

changed their full powers, have agreed upon and concluded the folowing articles:

Art. 1. Each of the contracting parties shall appoint a commissioner and surveyor, who shall meet before the termination of twelve months from the exchange of the ratifications of this Convention, at New Orleans, and proceed to run and mark that portion of the said boundary which extends from the mouth of the Sabine, where that river enters the Gulf of Mexico, to the Red River. They shall make out plans and keep journals of their proceedings and the result agreed upon by them shall be considered as part of this Convention, and shall have the same force as if it were inserted therein. The two governments will amicably agree respecting the necessary articles to be furnished to those persons, and also as to their respective escorts, should such be deemed necessary.

Art. 2. And it is agreed that until this line shall be marked out, as is provided for in the foregoing article, each of the contracting parties shall continue to exercise jurisdiction in all territory over which its jurisdiction has hitherto been exercised, and that the remaining portion of the said boundary line shall be run and marked at such time hereafter as may suit the convenience of both the contracting parties, until which time each of the said parties shall exercise without the interference of the other, within the territory of which the boundary shall not have been so marked and run, jurisdiction to the same extent to which it has been hertofore usually exercised."

f. Notes, Miller's Treaties

The following is taken from the notes appended to the foregoing Treaty in Volume 4 of Miller's Treaties, pages 135-136:

"The Negotiations

Each of the two Governments from the beginning of their relations regarded the boundary fixed by the earlier treaties of the United States with Spain and with Mexico (Documents 41 and 60) as binding, so far as concerned the line between the United States and the Repubic of Texas. The Government of the United States was so informed by the representatives of Texas as early as January 11, 1837 (Garrison, Diplomatic Correspondence of Texas, pt. 1, 175); the attitude of that Goverment at no time varied in that regard (ibid., 232, 279, 295); indeed, the Government of Texas appointed a commissioner to run the line accordingly (ibid., 252, August 4, 1837; 279, December 31, 1837). The boundaries of Texas, as claimed by that Government, were thus described in the intructions of March 21, 1838, from R. A. Irion, Secretary of State of Texas, to Memucan Hunt (ibid, 318-20):

The present boundaries of Texas as fixed by an act of Congress are as follows, viz-Beginning at the mouth of the Sabine River and running west along the Gulf of Mexico three leagues from land to the mouth of the Rio Grande; thence up the principal branch of said river to its source, thence north to the forty second degree of north

latitude; thence along the boundary line as defined in the treaty between the United States and Spain to the beginning.

That description of the boundaries of Texas was taken almost literally from the Texas act of December 19, 1836, 'to define the Boundaries of the Republic of Texas', which contained the following provisions (Laws of the Republic of Texas, I, 133-34):

That from and after the passage of this act, the civil and political jurisdiction of this republic be, and is hereby declared to extend to the following boundaries, to wit: beginning at the mouth of the Sabine river, and running west along the Gulf of Mexico three leagues from land, to the mouth of the Rio Grande, thence up the principal stream of said river to its source, thence due north to the forty-second degree of north latitude, thence due north to the forty-second degree of north latitude, thence along the boundary line as defined in the treaty between the United States and Spain, to the beginning; and that the president be, and he is hereby authorized and required to open a negotiation with the government of the United States of America, so soon as in his opinion the public interest requires it, to ascertain and define the boundary line as agreed upon in said treaty."

* * * * * * * *

6. TREATY OF GUADALUPE HIDALGO BETWEEN THE UNITED STATES AND MEXICO SIGNED AT GUADALUPE HIDALGO FEBRUARY 2, 1848

(9 Stat. 922, 5 Miller's Treaties 207)

"Article V.

The Boundary line between the two Republics shall commence in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande, otherwise called Rio Bravo del Norte, or opposite the mouth of it's deepest branch, if it should have more than one branch emptying directly into the sea; from thence up the middle of that river, following the deepest channel, where it has more than one, to the point where it strikes the southern boundary of New Mexico; thence, westwardly, along the whole southern boundary of New Mexico (which runs north of the town called Paso) to it's western termination; thence, northward, along the western line of New Mexico, until it intersects the first branch of the river Gila; (or if it should not intersect any branch of that river, then, to the point on the said line nearest to such branch, and thence in a direct line to the same;) thence down the middle of the said branch and of the said river, until it empties into the Rio Colorado; thence, across the Rio Colorado, following the division line between Upper and Lower California, to the Pacific Ocean.

* * * And, in order to preclude all difficulty in tracing upon the ground the limit separating Upper and Lower California, it is agreed that the

said limit shall consist of a straight line, drawn from the middle of the Rio Gila, where it unites with the Colorado, to a point on the coast of the Pacific Ocean, distant one marine league due south of the southernmost point of the Port of San Diego, according to the plan of said port made in the year 1782 by Don Juan Pantoja, second sailing master of the Spanish fleet, and published at Madrid in the year 1802, in the Atlas to the voyage of the schooners Sutil and Mexicana: of which plan a copy is hereunto added, signed and sealed by the respective plenipotentiaries."

* * *

7. THE GADSDEN TREATY BETWEEN THE UNITED STATES AND MEXICO, SIGNED AT MEXICO CITY DECEMBER 30, 1853

(10 Stat. 1031, 6 Miller's Treaties 293)

"Article 1

The Mexican Republic agrees to designate the following as her true limits with the United State for the future: retaining the same dividing line between the two California's, as already defined and established, according to the 5th Article of the Treaty of Guadalupe Hidalgo, the limits between the Two Republics shall be as folows: Beginning in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande, as provided in the fifth article of the treaty of Guadalupe Hidalgo; thence as defined in the said article, up the middle of that river to the point where the parallel of 31° 47′ north latitude crosses the same; thence due west one hundred miles,

thence south to the parallel of 31° 20′ north latitude; thence along the said parallel of 31° 20′ to the 111th meridian of longitude west of Greenwich; thence in a straight line to a point on the Colorado river twenty english miles below the junction of the Gila and Colorado rivers; thence up the middle of the said river Colorado until it intersects the present line between the United States and Mexico.

* * *

The dividing line thus established shall, in all time, be faithfully respected by the two Governments without any variation therein, unless of the express and free consent of the two, given in conformity to the principles of the Law of Nations, and in accordance with the Constitution of each country respectively.

* * *

In the notes to the above Treaty found in Volume 4 of Miller's Treaties, various boundary maps that were authenticated pursuant to the provisions of the Treaty are described. Map No. 1 is thus described on page 398:

"Map 1 covers the boundary from a point in the Gulf of Mexico, 'three leagues from land, opposite the mouth of the Rio Grande, otherwise called Rio Bravo del Norte . . . from thence, up the middle of that river, following the deepest channel', to a point above Brownsville, Texas. It is entitled, 'Boundary Between The United States And Mexico Agreed upon by the Joint Commission under the Treaty of Guadalupe Hidalgo; Surveyed in 1853 under the direction of Bvt. Major W. H. Emory, Corps of Topographi-

cal Engineers, Chief Astronomer and Surveyor; by Mr. Cha Radziminski, Prin. Ass. Surveyor, and Mr. Arthur Schott, Ass. Surveyor."

8. CONSTITUTION OF THE STATE OF FLORIDA 1868

(Thorpe's "Federal and State Constitutions," Vol. 2, pages 704, 706)

"Article II

Boundaries

The Boundaries of the State of Florida shall be as follows: Commencing at the mouth of the river Perdido; from thence up the middle of said river to where it intersects the south boundary-line of the State of Alabama on the thirty-first degree of north latitude; thence due east to the Chattahoochee River; thence down the middle of said river to its confluence with the Flint River; from thence straight to the head of the Saint Mary's River; thence down the middle of said river to the Atlantic Ocean; thence south-eastwardly, along the coast, to the edge of the Gulf Stream; thence southwestwardly, along the edge of the Gulf Stream and Florida Reefs, to and including the Tortugas Islands; thence northwestwardly to a point five leagues from the mainland; thence northwestwardly five leagues from the shore, including all islands, to a point five leagues due south from the middle of the mouth of Perdido River; thence to the place of beginning."

The Constitution of the State of Florida quoted above was approved by Act of Congress of February 25, 1868. (See 15 Stat. 73)

9. ACT OF CONGRESS OF AUGUST 15, 1914 PROHIBITING ANY CITIZEN OF THE UNITED STATES FROM TAKING SPONGES IN THE WATERS OF THE GULF OF MEXICO OUTSIDE OF STATE TERRITORIAL LIMITS

(38 Stat. 692, 16 U.S.C. 781)

"§781. Taking or catching, in waters of Gulf or Straits of Florida, commercial sponges of less than prescribed size, and landing or possession of same.

It is unlawful for any citizen of the United States, or person owing duty of obedience to the laws of the United States, or any boat or vessel of the United States, or person belonging to or on any such boat or vessel, to take or catch, by any means or method, in the waters of the Gulf of Mexico or the Straits of Florida outside of State territorial limits, any commercial sponges measuring when wet less than five inches in their maximum diameter, or for any person or vessel to land, deliver, cure, offer for sale, or have in possession at any port or place in the United States, or on any boat or vessel of the United States, any such commercial sponges. Aug. 15, 1914, c. 253, § 1, 38 Stat. 692."

The foregoing treaties and documents relate to the *boundaries* and the territory of the United States, and its predecessors in title, in the Gulf of Mexico. It is significant to note that although earlier treaties

fixed the limits far into the sea, the United States has always assented and recognized a boundary three leagues into the Gulf. The Act of Congress of August 15, 1914, last quoted specifically recognizes State ownership of this marginal belt in the sea.

F. EUROPEAN TREATIES AND INTERNATIONAL DOCUMENTS RELATING TO SOVEREIGNTY OVER TERRITORIAL WATERS AND SUBMERGED LANDS IN AMERICA PRIOR TO AND AT THE TIME OF THE ADMISSION OF LOUISIANA TO THE UNION

1. TREATY OF WESTPHALIA—1648

Treaty of peace between Spain and the United provinces of the low countries made at Munster the 30th day of January, 1648.

(British and Foreign State papers, Vol. 1, pages 577-581)

"V. The navigation and trade to the East and West Indies, shall be kept up according and conformably to the Grants made or to be made for that effect, for the security whereof the present Treaty shall serve, and the Ratification thereof on both sides, which shall be obtained: and in the said Treaty shall be comprehended all Potentates, Nations, and People, with whom the said Lords, the States, or Members of the East and West India Companies in their name, within the limits of their said Grants, are in friendship and alliance.

And both the aforesaid Lord, the King and the States respectively, shall continue in possession of such Lordships, Cities, Castles, Towns, Fortresses, Countries and commerce, in the East and West Indies, as also in Brazil, upon the coasts of Asia, Africa, and America, respectively, as the said Lords, the King and the States respectively, hold and possess, comprehending therein particularly the Places and Forts which the Portuguese have taken from the Lords and States since the year 1641, as also the Forts and Places which the said Lords and States shall chance to acquire and possess after this, without infraction of the present Treaty.

VI. And as to the West Indies, the Subjects and Inhabitants of the Kingdoms, Provinces, and Lands of the said Lords, the King and States respectively, shall forbear sailing to, and trading in any of the Harbours, Places, Forts, Lodgments or Castles, and all others possessed by the one or the other Party, viz., the Subjects of the said Lord the King shall not sail to or trade in those held and possessed by the said Lord the King. And among the places held by the said Lords the States, shall be comprehended the places in Brazil, which the Portuguese took out of the hands of the States, and have been in possession of ever since the year 1641, as also all the other places which they possess at present, so long as they shall continue in the hands of the said Portuguese, anything contained in the preceding Article notwithstanding.

XXIII. It shall not be lawful to come ashore, enter, or stop at the Ports, Harbours, Shallows, or Roads of one another, with Men-of-War and

Soldiers, in such number as may cause suspicion, without the leave and permission of him to whom the said Ports and Harbours, Shallows ,and Roads belong, unless they are forced in by storm, or obliged thereto through necessity, or to avoid the dangers of the sea."

2. TREATY OF UTRECHT—1713

A treaty of peace and friendship between Great Britain and France March 4, 1713.

(Journal of the House of Commons
1713 pages 329-330)

"X.

The said most Christian King shall restore to the Kingdom and Queen of Great Britain, to be possessed in full Right for ever, the Bay and Straits of Hudson, together with all lands, seas, sea-coasts, rivers, and places, situate in the said Bay and Straits, and which belong thereunto; no tracts of land, or of sea being excepted, which are at present possessed by the subjects of France; * * * But it is agreed, on both sides, to determine, within a Year, by Commissaries to be forthwith named by each Party, the Limits which are to be fixed between the said Bay of Hudson and the Places appertaining to the French; which Limits both the British and French Subjects shall be wholly forbid to pass over, or to go to each other by Sea, or by Land; the same Commissaries shall also have orders to describe and settle, in like manner, the Boundaries between the other British and French Colonies in those parts."

"XII.

The most Christian King shall take care to have delivered to the Queen of Great Britain, on the same Day that the ratifications of this treaty shall be exchanged, solemn and authentic letters or instruments, by virtue whereof it shall appear, that the Island of St. Christopher's is to be possessed alone hereafter by British Subjects; likewise all Nova Scotia or Accadie, with its ancient Boundaries; as also the City of Port Royal, now called Annapolis Royal; and all other things in those parts, which depend on the said lands and island; together with the dominion, propriety, and possession, of the said islands, lands, and places, and all right, whatsoever, by treaties, or by any other way, obtained, which the most Christian King, the Crown of France, or any of the subjects thereof, have hitherto had to the said islands, lands, and places, and the inhabitants of the same, are yielded, and made over, to the Queen of Great Britian, and to her Crown, forever, as the most Christian King doth to present yield, and made over, all the particulars abovesaid; and that in such ample manner and form, that the subjects of the most Christian King shall hereafter be excluded from all king of fishing in the said seas, bays, and other places, on the coasts of Nova Scotia; that is to say, on those which lie towards the East, within Thirty Leagues, beginning from the island commonly called Sable, inclusively, and thence stretching along towards the Southwest."

"XIII.

The island called Newfoundland, with the adjacent islands, shall, from this time forward,

belong, of right, wholly to Britain * * * But it shall be allowed to the subjects of France to have a fishery, and to dry their fish, on land, in that part only, and in no other besides that, of the said island of Newfoundland, which stretches from the place called Cape Bonavista to the northern point of the said island; and, from thence running down by the western side, reaches as far as the Place called Point Riche: but the island called Cape Breton, as also all others, both in the Mouth of the River of St. Laurance, and in the Gulf of the same name, shall hereafter, of right, belong to the French; and the most Christian King shall have all manner of Liberty to fortify any place or places there."

"XXV.

The Treaty of Peace, made this day, between his Sacred Royal most Christian Majesty, and his Royal Highness the Duke of Savoy, is particularly included in this Treaty, as an essential part of it; and is confirmed by it, in the same manner as if it were, word for word, inserted therein; her Royal Majesty of Great Britain declaring expressly, that she will be bound by the stipulations of security and guaranty promised therein, as well as by those which she has formerly taken upon herself."

"XXVI.

The most Serene King of Sweden, with his Kingdoms, Dominions, Provinces, and Rights; as also the Great Duke of Tuscany; the Republic of Genoa; and the Duke of Parma; are, in the best manner, included in this Treaty."

"XVII.

Their Majesties have also been pleased to comprehend in this Treaty the Hans Towns; namely, Lubeck, Bremen, and Hamburg, and the City of Dantizick; with this effect, that, as soon as the General Peace shall be concluded, the Hans Towns, and the City of Denizick, may, for the future, as common friends, enjoy the ancient advantages which they have heretofore had in the benefits of trade, either by Treaties, or by old Custom."

"XXVIII.

Those shall be comprehended in this present Treaty of Peace, who shall afterwards be named by common consent on the one Part, and on the other, before the exchange of the ratifications, or within six months."

3. TREATY OF PEACE AND FRIENDSHIP BETWEEN GREAT BRITAIN AND SPAIN CONCLUDED AT UTRECHT, JULY 2-3, 1713

(From European Treaties Bearing On the History of the United States, Davenport, Volume 3, pages 227-231)

"Translation.

Phillip, by the grace of God king of Castile, Leon, Aragon, the two Sicilies, Jerusalem, Navarre, Granada, Toledo, Valencia, Galicia, Majorca, Seville, Sardinia, Cordova, Corsica, Murcia, Jaen, the two Algarves, Algeciras, Gibraltar, the Canary Islands, the East and West Indies, the islands

and mainland of the Ocean, archduke of Austria, duke of Burgundy, Brabant, and Milan, count of Hapsburg, Flanders, Tyron, and Barcelona, lord of Biscays and Molina, etc. Whereas there has been concerted, concluded, and signed, in the city of Utrecht, on the thirteenth of July this present year, by my extraordinary plenipotentiary ambassadors and those of the Most Serene Queen of Great Britain, my very dear and very beloved sister and cousin, a treaty of peace and friendship, the tenor of which in the Latin language, is as follows: * * *

8. That there be a free use of navigation and commerce between the subjects of the two kingdoms, as it was theretofore, in time of peace, and before the declaration of this late war, in the reign of Charles the Second, of glorious memory, Catholic king of Spain, according to the treaties of friendship, alliance, and commerce, which were formerly made between the two nations, according to ancient customs, letters patent, cedulas, and other particular acts, and also according to the treaty or treaties of commerce which have now been, or will forthwith be made at Madrid. Since however among other conditions of the general peace, it has been by common consent established as a chief and fundamental rule that the exercise of navigation and commerce to the Spanish West Indies should remain in the same state as it was in the time of the aforesaid King Charles the Second, that therefore this rule may hereafter be observed with inviolable faith and in a manner never to be broken, and thereby all causes of distrust and suspicion concerning that matter may be pre-

vented and removed, it is especially agreed and concluded that no license, nor any permission at all, shall at any time be given either to the French or to any nation whatever, in any name or under any pretense, directly or indirect, to sail, to traffic, or to introduce negroes, goods, merchandises, or any things whatsoever, into the dominions subject to the crown of Spain in America, except what may be agreed upon by the treaty or treaties of commerce abovesaid, and the rights and privileges granted in a certain convention, commonly called the Asiento de Negros, whereof mention is made in the twelfth article, and except also whatsoever the said Catholic King, or his heirs or successors, shall promise by any contract or contracts for the introduction of negroes into the Spanish West Indies, that shall be made after that the convention of the Assiento de Negros abovementioned shall have been determined. And that more strong and full precautions may be taken on both sides, as abovesaid, concerning the navigation and commerce to the West Indies, it is hereby further agreed and concluded that neither the Catholic King, nor any of his heirs and successors whatsoever, shall sell, yield, pawn, transfer, or by any means or under any name, alienate from them and from the crown of Spain, to the French or to any other nations whatever, any jurisdictions, dominions, or territories, or any part thereof, belonging to Spain in America. On the contrary, that the Spanish dominions in America may be preserved whole and entire, the Queen of Great Britain engages that she will endeavor and give assistance to the Spaniards, that the ancient limits of their

dominions in America be restored and settled as they stood in the time of the abovesaid Catholic King Charles the Second, if it shall appear that they have in any manner, or under any pretext, been broken into or lessened in any part, since the death of the aforesaid Catholic King Charles the Second.

* * *

15. Their royal Majesties on both parts renew and confirm all treaties of peace, friendship, alliance, and commerce, made heretofore and concluded between the crowns of Great Britain and Spain, and the said treaties are hereby renewed and confirmed in as full and ample manner as if they were now particularly here inserted; that is to say, as far as they are not found to be contrary to the treaties of peace and commerce which were the last made and signed. * * *"

4. PRELIMINARY ARTICLES OF PEACE SIGNED AT FONTAINEBLEAU NOVEMBER 3, 1762, BY GREAT BRITAIN, SPAIN AND FRANCE

(From the Journal of the House of Commons Vol. 29, pages 364-367)

"Article III.

The Subjects of France shall have the liberty of fishing and drying on a part of the coast of the island of Newfoundland, such as it is specified in the 13th Article of the Treaty of Utrecht, which Article shall be confirmed and renewed by the approaching Definitive Treaty,

except what regards the Island of Cape Breton, as well as the other islands in the Mouth, and in the Gulf of Saint Lawrence: And his Britannic Majesty consents to leave to the Most Christian King's Subjects the liberty to fish in the Gulf of Saint Lawrence, on condition that the subjects of France do not exercise the said fishery but at the distance of three leagues from all the coasts belonging to Great Britain, as well those of the Continent, as those of the islands situated in the said Gulf of Saint Lawrence. And as to what relates to the fishery out of the said gulf, his Most Christian Majesty's Subjects shall not exercise the fishery but at the distance of Fifteen Leagues from the coasts of the island of Cape Breton.

Article XVIII.

The King of Great Britain shall restore to Spain all that he has conquered in the Island of Cuba, with the Fortress of the Havannah; and that Fortress, as well as all the other Fortresses of the said island, shall be restored in the same condition they were in when they were conquered by His Britannic Majesty's Arms.

Article XIX

In consequence of the restitution stipulated in the preceding Article, his Catholic Majesty cedes and guaranties, in full right, to His Britannic Majesty, all that Spain possesses on the Continent of North America, to the east, or to the Southeast, of the River Mississippi. * * *

Article XX.

The King of Portugal, His Britannic Majesty's Ally, is expressly included in the present preliminary articles, and their Most Christian and Catholic Majesties engage to re-establish the ancient Peace and Friendship between them and his most Faithful Majesty. * * *"

5. DEFINITIVE TREATY OF PEACE, SIGNED AT PARIS, FEBRUARY 10, 1763, BETWEEN GREAT BRITAIN, SPAIN AND FRANCE

(Journal of the House of Commons, Vol. 29, pages 588-594)

"Article I.

There shall be a Christian, universal, and perpetual peace as well by Sea as by Land, and a sincere and constant Friendship shall be re-established between their Britannic, Most Christian, Catholic, and Most Faithful Majesties, and between their heirs and successors, Kingdoms, dominions, provinces, countries, subjects, and vassals, of what quality or condition soever they be, without exception of places, or persons. * * *

Article II.

The Treaties of West Phalia of 1648, those of Madrid between the Crowns of Great Britain and Spain of 1667 and 1670, the Treaties of Peace of Nimuguen of 1678 and 1679, of Ryswick of 1697, those of Peace and of Commerce of Utrecht of 1713, that of Baden of 1714, the

Treaty of the Triple Alliance of the Hague of 1717, that of the quadruple Alliance of London of 1718, the Treaty of Peace of Vienna of 1738, the Definitive Treaty of Aix la Chapelle of 1748, and that of Madrid, between the Crowns of Great Britain and Spain, of 1750, as well as the Treaties between the Crowns of Spain and Portugal, of the 13th February 1668, of the 6th February 1715, and of the 12th February 1761, and that of the 11th April 1713, between France and Portugal with the Guaranties of Great Britain, serve as a Basis and Foundation to the peace, and to the present Treaty; and for this purpose, they are all renewed and confirmed in the best form, as well as all the Treaties in general, which subsisted between the High Contracting Parties before the War, as if they were inserted here word for word, so that they are to be exactly observed, for the future, in their whole tenor, and religiously executed on all sides, in all their points which shall not be derogated from by the present Treaty, notwithstanding all that may have been stipulated to the contrary by any of the High Contracting Parties: and all the said parties declare, that they will not suffer any privilege, favour, or indulgence, to subsist, contrary to the Treaties above confirmed, except what shall have been agreed and stipulated by the present Treaty. * * *

Article V.

The Subjects of France shall have the Liberty of fishing and drying, on a part of the coasts of the island of Newfoundland, such as it is specified in the XIIth Article of the Treaty of Utrecht:

which Article is renewed and confirmed by the present Treaty (except what relates to the island of Cape Breton, as well as to the other islands and coasts in the Mouth and in the Gulf of St. Laurence:) And His Britannic Majesty consents to leave to the Subjects of the Most Christian King the Liberty of fishing in the Gulf on condition that the Subjects of France do not exercise the said fishery, but at the distance of Three Leagues from all the coasts belonging to Great Britain, as well those of the Continent, as those of the islands situated in the said Gulf of St. Laurence. And as to what relates to the fishery on the coasts of the Island of Cape Breton out of the said Gulf, the Subjects of the Most Christian King shall not be permited to exercise the said fishery, but at the distance of Fifteen Leagues from the coasts of the Island of Cape Breton; and the fishery on the Coasts of Nova Scotia or Acadia and every where else out of the said Gulf, shall remain on the Foot of former Treaties."

6. DEFINITIVE TREATY OF PEACE AND FRIENDSHIP BETWEEN BRITAIN AND FRANCE, AT VERSAILLES, THE 3rd OF SEPTEMBER, 1783

(Journal of the House of Commons, Volume 39, pages 718-725)

"In the Name of the Most Holy and Undivided Trinity, Father, Son, and Holy Ghost. So be it.

Be it known to all those whom it shall or may in any manner concern. The Most Serene and

Most Potent Prince George the Third, by the Grace of God, King of Great Britain, France, and Ireland, Duke of Brunswick and Lunenburgh, Arch-Treasurer and Elector of the Holy Roman Empire, and the most Serene and Most Potent Prince Lewis the Sixteenth, by the Grace of God, Most Christian King, being equally desirous to put an end to the war, which for several years past afflicted their respective Dominions, accepted the offer, which their Majesties the Emperor of the Romans, and the Empress of all the Russias, made to them, if their interposition, and of their mediation; But their Britanic and Most Christian Majesties, animated with a mutual desire of accelerating the re-establishment of peace, communicated to each other their laudable intention; which Heaven so far blessed, that they proceeded to lay the foundations of peace, the 20th of January in the present year. * * * Who, after having exchanged their respective full powers, have agreed upon the following articles.

Article I.

There shall be a Christian, universal, and perpetual peace, as well by sea, as by land, and a sincere and constant friendship shall be re-established between their Britannic and Most Christian Majesties.

Article 2.

The Treaties of West Phalia of 1648, the Treaties of peace of Nimeguen of 1678, and 1679; of Ryswick of 1697, those of Peace and of Commerce of Utrecht of 1713; that of Baden of 1714;

that of the Triple Alliance of the Hague of 1717; that of the Quadruple Alliance of London of 1718; the Treaty of Peace of Vienna of 1738; the Definitive Treaty of Aix-la-Chapelle of 1748; and that of Paris of 1763, serve as a basis and foundation to the peace, and to the present Treaty, and for this purpose, they are all renewed and confirmed in the best form, as well as all the Treaties in general which subsisted between the High Contracting Parties before the war, as if they were herein inserted word for word; so that they are to be exactly observed for the future in their full tenor, and religiously executed by both parties, in all the points which shall not be derogated from by the present Treaty of Peace.

Article 5.

His Majesty the Most Christian King, in order to prevent the quarrels which have hitherto arisen between the two nations of England and France, consents to renounce the right of fishing, which belongs to him in virtue of the aforesaid article of the Treaty of Utrecht, from Cape Bonavista to Cape St. John, situated on the Eastern coast of Newfoundland, in fifty degrees north latitude; and His Majesty the King of Great Britain consents, on his part, that the fishery assigned to the subjects of His Most Christian Majesty, beginning at the said Cape St. John, passing to the north and descending by the western coast of the island of Newfoundland, shall extend to the place called Cape Raye, situated in forty seven degrees, fifty minutes, latitude. The French fishermen shall enjoy the fishery which is assigned

to them by the present article, as they had the right to enjoy that which was assigned to them by the Treaty of Utrecht.

Article 6.

With regard to the fishery in the Gulf of St. Laurence, the French shall continue to exercise it conformably to the fifth article of the Treaty of Paris."

7. TREATY OF MADRID — CONVENTION BETWEEN BRITAIN AND SPAIN SIGNED AT THE ESCURIAL, 28th OF OCTOBER, 1790

In this Treaty Great Britain and Spain respectively recognize the sovereignty of the other nation over lands and waters lying within 10 leagues seawärd of their possessions in North and South America. Excerpts from this Treaty appear, supra, in Part C of this Appendix.

It will be noted that in all of the above-named Treaties dealing with territorial waters on the North American Continent the boundaries of the various colonies on this Continent were fixed at not less than three-leagues from coast and in most instances from ten to forty leagues from coast.

G. INTERNATIONAL LAW RELATING TO SUBMERGED LANDS AND TERRITORIAL WATERS — THE 18th AND 19th CENTURIES

In the case of *The Paquete Habana*, 175 U.S. 677 700, 44 L.Ed. 320, 329, this Court stated that where there is no treaty and no controlling executive legislative act or judicial decision, international law is determined by the customs and usages of civilized nations, and, as evidence of these, to the works of jurists and commenators who by years of labor, research and experiences have made themselves peculiarly well acquainted with the subjects of which they treat, citing:

> *Hilton v. Guyot*, 159 U.S. 113, 163, 164, 214, 215, 40 L.Ed. 95, 108, 125, 126, 16 S.Ct. 139, and *Wheaton On International Law*, 8th Edition, Section 15, 1 *Kent Com.* 18.

The statements of the following authorities on international law relative to submerged lands and territorial waters were made by recognized authorities during the later one-half of the 18th Century and the first half of the 19th Century. They therefore reflect the status of international law as of the date when Louisiana was admitted into the Union in 1812.

The most celebrated book on international law during the second one-half of the 18th Century was Emmerich de Vattel's "Le Droit des Gens (London 1758)." Riesenfeld in his book "Protection of Coastal Fisheries Under International Law", page 22, states

that three copies of Vattel's book were sent to America during the early days of the American Revolution and "It became the standard authority of international law toward the end of the Century. Its tremendous influence warrants a rather extensive quotation." Vattel makes the following statements with regard to territorial waters and fishing rights (Professor Fenwick's translation, Volume III, page 107, 108):

> "The various uses to which the sea near the coasts can be put, render it a natural object of ownership. Fish, shells, pearls, amber, etc., may be obtained from it. Now, with respect to all these things, the resources of coast seas are not inexhaustible, so that the Nation to which the shore belongs may claim for itself an advantage thus within its reach and may make use of it, just as it has taken possession of the lands which its people inhabit. Who can doubt that the pearl fisheries of Bahrein and Ceylon may be lawful objects of ownership? * * *
>
> It is not easy to determine just what extent of its marginal waters a Nation may bring within its jurisdiction . . . But between Nation and Nation the most reasonable rule that can be laid down is that in general the sovereignty of a State over its marginal waters extends as far as is necessary for its safety and as far as it can be effectively maintained; because on the one hand a Nation may appropriate only so much of common property, like the sea, as it has need for some lawful end, and, on the other hand, it would be an idle and ridiculous pretension to claim a right which a Nation would have no means of enforcing . . ."

Georg Friedrich von Martens in 1789 published in French "Precis du Droit des Gens Moderne de' Europe, which work was translated into English by William Cobbett in 1795 under the title of "Summary of the Law of Nations." Riesenfeld states on page 26 of his work referred to above that "as the writer stated in the second edition his work was subscribed to by all members of Congress." The Cobbett translation of Martens' work, page 160 makes the following statement:

> "A custom, generally acknowledged, extends the authority of the possessor of the coast to a cannon shot from the shore; that is to say, three leagues from the shore, and this distance is the least, that a nation ought now to claim, as the extent of its dominions on the seas."

Martens stated that "a nation may occupy and extend its dominions, beyond the distance maintained in the last section . . . and such dominion may, if national security requires it, be maintained by fleet of armed vessels." Later, on page 165, he makes the statement that the exclusive right of the coastal state to all sea products is recognized "within the distance of three leagues."

A German Edition of Von Martens published in 1796 at page 46 states:

> "Pfeffel in Principes du droit naturel, bk. 3, chap. IV, sec. 15, indicates the distance of three leagues as the now universal principle. This prin-

ciple is now incorporated in many treaties, even though no cannon reaches that far, especially over the sea."

Martens, "Precis du droit des gens moderne de l'Europe", (2d ed., Paris, 1801), pp. 71-2, makes this statement:

"Today all nations of Europe agree that, as a rule, the straits, gulfs and the marginal sea belong to it (the coastal state), at least as far as a cannon, placed on the shore, would carry. In a number of treaties the more extended principle of three leagues has even been adopted."

Riesenfeld makes the further comment regarding Von Martens on page 29 of his work:

"It is probably no exaggeration to state that G. F. von Martens gave the theory of international law a new direction. He was the great model of all continental writers in the century which followed the appearance of the first French and German editions of his work. Rivier calls him in his well-known Esquisse d'une histoire litteraire des systemes et methodes du droit des gens depuis Grotius jusqu'a nos jours, the true originator of the systematic and scientific study of the positive law of nations.

Of the writers who succeeded him only a few warrant such high praise. Many of them have fallen into a deserved oblivion." * * *

The following is taken from Joseph M. G. de Rayneval's "Institutions du droit de la nature et des gens" (Paris 1803):

"The sea which wasnes the shores of a state

is deemed to form a part thereof; its safety and tranquility render this property necessary; the sea must play the part of a bulwark. We could add that the bottom of the sea along the coasts can be considered as having formed a part of the continent and is therefore still considered as forming such part.

But the extent of this property is not determined by a uniform rule. Some fix it at thirty leagues, others only at three; others again fix it at the range of a cannon placed upon the shore. Along the southern coasts of France the distance was ten leagues with regard to the moors."

In the 3rd Edition of Rayneval's works, edited by his son in 1832, we read (page 300):

"But the extent of this property is not determined by a uniform rule: some fix it at a hundred miles, others at sixty, and still others at three."

The following is taken from Riesenfeld's "Protection of Coastal Fisheries Under International Law," page 33:

"8. In his Das Europaische Volker-Recht (Berlin, 1817, pp 140-1) Theodor A. Schumalz distinguished between the territorial sea in Europe and in the colonies, his theory being quite similar to that of B. S. Nau. While in the colonies large belts of the ocean were claimed, in Europe the practice was to the effect that the sea could be appropriated only within a cannon's range, a

distance which arbitrarily, as he said, had been fixed at three leagues (lieues). One may note his reference to leagues instead of miles.

9. Julius Schmelzing, Systematischer Grundriss des praktischen Europaischen Volker-Rechtes (Rudolstadt, 1818) adopted Schmalz's statement almost verbatim (vol. 2, p. 13). In addition he cited Pfeffel who also had been von Martens' authority for the adoption of the three-league limit.

10. The celebrated Johann L. Kluber accepted the cannon-shot rule as the measure for the territorial sea in his Droit des gens moderne de l'Europe (Stuttgart, 1819, p. 200), but he noted that in many treaties—as for instance the Treaty of Paris (1763)—three leagues were accorded."

James Kent wrote his "Commentaries on American Law" in 1896 and on page 29 of this work he states:

"It is difficult to draw any precise or determinate conclusion, amidst the variety of opinion, as to the distance to which a state may lawfully extend its exclusive dominion over the sea adjoining its territories, and beyond those portions of the sea which are embraced by harbours, gulfs, bays and estuaries, and over which its jurisdiction unquestionably extends."

He then went on to state that "all that can reasonably be asserted is that the dominion of the sovereign of the shore over the contiguous sea extends as far as is requisite for his safety, and for some lawful end."

G. Masse in 1844 published his "Le Droit Commercial Dans ses Rapports Avec le Droit des Gens" (Paris, 1844, Vol. 1, pp 114-15) and recommended the three-mile rule as the limit of the territorial sea, but he concluded (Vol. I, p. 14 and 15):

> "However, in practice this logical rule is not followed. Each people determines a certain distance in the ocean within which it exercises its authority and which constitutes the territorial sea for all who admit this determination. For the French coasts this distance amounts to two myriameters or five leagues in virtue of a customs law of the fourth of Germinal of the Year 11 (since the French revolution). Vessels that enter within such a radius and the merchandise they carry immediately become subject to French customs law. A great number of treaties fix this distance at 3 leagues."

In his "Draft Outlines of an International Code," published at New York in 1872, David Dudley Field adopted the view that territorial waters extended as far as three marine leagues (§ 28). The same rule was stated in the second edition of his Code (New York, 1876, §28).

In the latter one-half of the 19th Century William E. Hall published his celebrated "International Law" (Oxford 1880). On page 126 he makes the following statement with respect to marginal waters:

> "Generally their limit is fixed at a marine league from the shore; but this distance was defined by the supposed range of a gun of position,

and the effect of the recent increase in the power of artillery has not yet been taken into consideration, either as supplying a new measure of the space over which control may be efficiently exercised, or as enlarging that within which acts of violence may be dangerous to persons and property on shore. It may be doubted, in view of the very diverse opinions which have been held until lately as to the extent to which marginal seas may be appropriated, of the lateness of the time at which much more extensive claims have been fully abandoned, and of the absence of cases in which the breadth of territorial water has come into international question, whether the three-mile limit has ever been unequivocally settled; but in any case, as it has been determined, if determined at all, upon an assumption which has ceased to hold good, it would be pedantry to adhere to the rule in its present form; and it is probably safe to say that a state has the right to extend its territorial waters from time to time at its will with the increased range of guns."

The following position was taken by the American writer Edwin F. Glenn in his "Handbook of International Law" (St. Paul, 1895):

"The jurisdiction of a state over its marginal waters extends from the shore to such distance as the power of the state is effective, the generally accepted distance, being a marine league (3½ English miles), is determined by the effective range of cannon . . . At the present time, however, the effective range of cannon has been very much increased, and modern guns are effective

for at least double this distance; and there can be little, if any, doubt as to the absolute right of a state to extend its territorial waters to correspond with this increased range (p. 59)."

Although the United States and Britain both have in the latter part of the 19th Century asserted a three-mile limit to territorial waters on certain coasts and in certain seas, and a number of writers during this period have declared the three-mile limit to be a rule of international law, *the three-mile seaward boundary is not a generally accepted limit in international law, and certainly was not accepted as a rule in 1812, or earlier years.* As shown in prior sections of this Appendix this limit has been accepted by the United States only on its Atlantic and Pacific Coasts but not in the Gulf of Mexico. *In the past decade this so called three-mile limit has been discarded entirely for a more extensive boundary which includes the entire Continental Shelf.*

The so-called three-mile rule was generally repudiated at the Hague Codification conference of 1930. In 1934 Gilbert Gidel published in Paris his celebrated treatise "Le Droit International Public de la Mer." In this work he gave a very comprehensive treatment to the entire question regarding the extent of the territorial seas. In volume III, page 151, he says:

"The alleged three-mile rule was the chief victim of the Conference (i. e. the Hague Codification Conference of 1930). Since then it is im-

possible to speak of the three-mile rule as constituting a rule of general positive international law. It can only be a rule governing internal affairs, for a certain number of states which have adopted it for the purpose of regulating a certain number of interests; the three-mile rule, as a rule of international law, can be no more than a conventional rule, applicable in the relations between the states which have bound themselves expressly to observe it. The three-mile rule exists only as a minimum rule with respect to the extent of the territorial sea. It is not a rule of international law without qualification . . ."

H. JURISDICTION EXERCISED BY LOUISIANA OVER WATERS AND THE BED OF THE GULF OF MEXICO

1. LEGISLATIVE ACTS RELATING TO FISHERIES AND OYSTERS

Act 18 of 1870

"AN ACT

"To regulate the Oyster Fisheries on the bays and coasts of the State of Louisiana.

"In order to preserve the oyster reefs on the bays and coasts of the State of Louisiana from wanton spoilation and ultimate destruction, and to secure to the people of this State the permanent enjoyment of one of the great luxuries of life and to perpetuate and protect a species of property that has hitherto been, and may still be, a great source of revenue to the State of Louisiana—

"Section 1. Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened, That the season for fishing oysters on the reefs, bays and coasts of the State of Louisiana shall commence on the fifteenth day of September and end on the first day of April, and during the aforesaid period, all citizens of the United States, or at least those who have declared their intention of becoming such, are hereby permitted, without any restriction whatever or any payment of taxes and dues to the State of Louisiana, for the privilege to fish, bed and remove oysters for their own use and benefit, or for sale or any other purpose, on any of the reefs, bays and coasts of the State of Louisiana.

* * * *

"Sec. 4. Be it further enacted, etc., That none but citizens of the United States, or at least those who have declared their intention of becoming such, shall fish, bed or remove oysters on any of the reefs, bays and coasts of the State of Louisiana, under a penalty of not less than fifty nor more than one hundred dollars, recoverable in any court having competent jurisdiction, one-half to the informer and the remainder to the school fund of the parish in which the offense is committed."

Act 106 of 1886

"AN ACT

"To encourage, protect, regulate and develop the industry in the State of Louisiana, and imposing penalties for the violation of the provisions of this act.

"Section 1. Be it enacted by the General Assembly of the State of Louisiana, That all the beds of the rivers, bayous, creeks, lakes, coves, inlets and sea marshes bordering on the Gulf of Mexico, and all that part of the Gulf of Mexico within the jurisdiction of this State, and not heretofore sold or conveyed by special grants or by sale by this State, or by the United States to any private party or parties, shall continue and remain the property of the State of Louisiana, and may be used as a common by all the people of the State for the purpose of fishing and of taking and catching oysters and other shell fish, subject to the reservations and restrictions hereinafter imposed, and no grant or sale, or conveyance shall hereafter be made by the Register of the State Land office to any estate, or interest of the State in any natural oyster bed or shoal, whether the said bed or shoal shall ebb bare or not.

* * * *

"Sec. 4. Be it further enacted, etc., That the police jury of any parish, in which natural osyter beds are formed and in which there are water beds and water ways suitable for oyster planting and cultiva-

tion, are hereby empowered to make all needful rules and regulations, and pass all ordinances, not otherwise provided for in this act, necessary to carry into effect the provisions of this act in their respective parishes.

* * * *

"Sec. 6. Be it further enacted, etc., That any person, being a resident of this State, who shall be desirous of catching or taking oysters with ordinary oyster tongs or otherwise, for sale, shall apply to the tax collector of said parish, or one of his deputies for the parish in which he resides, for registration. * * *

* * * *

"Sec. 8. Be it further enacted, etc., That hereafter it shall not be lawful for any person to take or catch oysters in the waters of this State with tongs or in any other way from the 30th day of April to the 15th day of August; * * *

* * * *

"Sec. 10. Be it further enacted, etc., When any difficulty may arise in the execution of this law, it shall be the duty of each collector to give information of any violation thereof known to him or which may be brought to his notice, to the district attorney for the district in which any offense may have been committed, * * * All owners and masters of canoes, boats or vessels, registered or licensed under the provisions of this act, are hereby constituted officers of this State, for the purpose of arresting and taking before a justice of the peace, who shall have jurisdiction thereof, any person or persons who may be engaged in violat-

ing any of the provisions of this act, and of seizing any canoes, boat or vessel engaged therein; and all such owners or masters are hereby vested with power to summon the posse comitatus to aid in making such arrest and seizure as fully as are constables and sheriffs of the several parishes of the State. * * *

* * * *

"Sec. 11. Be it further enacted, etc., That all that part of the State of Louisiana adapted to the oyster industry shall be divided as follows: All such part of the State lying east of the Mississippi river shall be known as the first oyster district of the State of Louisiana; and all such parts of the State lying between the Mississippi river and the Atchafalaya river, shall be known as the second oyster district of Louisiana; and all such parts of the State lying west of the Atchafalaya river shall be known as the third oyster district of Louisiana; and the Governor shall, when this can be done without any expense to the State other than what shall be known as the Oyster Fund in the State Treasury, by and with the advice and consent of the Senate, appoint three State commissioners, to be known as the 'Oyster Commissioners,' one from each oyster district, as provided for in this act. * * *"

Act 110 of 1892

"AN ACT

"To encourage, protect, regulate and develop the oyster industry of the State of Louisiana; to define the rights of riparian proprietors in oyster beds and fisheries on their water front; to provide for

the leasing of oyster lands belonging to the State; to provide for the taxation of oyster grounds and their produce, and the capital invested in oyster fisheries; for the licensing, registration and designation of vessels engaged therein; to provide for the punishment of persons depredating on oyster grounds; establishing a close season for the fishing of oysters grown in this State; to authorize the police juries of the several parishes in which oyster lands are situated; to pass ordinances to carry out the provisions of this act; to provide for the appointment of an oyster inspector for each of said parishes; to define his duties and powers and fixing his salary; and imposing penalties for violations of this act.

"Section 1. Be it enacted by the General Assembly of the State of Louisiana, That all the beds of the rivers, bayous, creeks, lakes, coves, and inlets, bordering on the Gulf of Mexico, and all that part of the Gulf of Mexico within the jurisdiction of this State; shall continue and remain the property of the State of Louisiana, and may be used as common by all citizens of the State for the purposes of fishing and taking and catching oysters and other shell fish subject to the reservations and restrictions hereinafter imposed and no grant or sale or conveyance shall hereafter be made by the Register of the State Land Office to any estate, or interest of the State, in any natural oyster bed or shoal, whether the said bed or shoal shall ebb bare or not; and the citizens, of this State shall

have the exclusive privilege to fish or take oysters in any natural oyster bed or shoal subject to the restrictions hereinafter imposed.

* * * * *

"Sec. 4. Be it further enacted, etc., That any person or persons desiring to locate places for the bedding and planting of oysters upon the water front of any lands owned by the State shall make application to the police jury of the parish in which said lands are situated, stating the number of acres, the description of the place and where situated, accompanied by a map or sketch and process verbal of survey by the parish surveyors, showing metes and bounds, * * *

"Sec. 5. Be it further enacted, etc., That any person, being a citizen of this State, who shall be desirous of catching or taking oysters with ordinary tongs, or otherwise, for sale, shall apply to the tax collector of said parish, or one of his deputies, for the parish in which he resides, for registration. * * *

* * * *

"Sec. 9. Be it further enacted, etc., That when any difficulty may arise in the execution of this law it shall be the duty of each collector to give information of any violation thereon known to him, or which may be brought to his notice, to the district attorney for the district in which any offense may have been committed, and the collector shall be guided by the instruction of said district attorney in the mode or proceeding and the remedy provided, and it shall be the duty of said attorney to institute the proper pro-

ceedings accordingly and prosecute the same, as provided by this act and the revenue laws of this State. The penalties herein prescribed not otherwise provided for shall be recoverable by presentment, indictment or information in the district court having jurisdiction thereof. All owners and masters of canoes, boats or vessels registered or licensed under the provisions of this act are hereby constituted officers of this State for the purpose of arresting and taking before a justice of the peace, who shall have jurisdiction thereof as a committing magistrate, any person or persons who may be engaged in violating any of the provisions of this act, * * *

* * * *

"Sec. 14. Be it further enacted, etc., That it shall be the duty of the police juries in the various parishes in which oyster lands may be situated, at their first regular meeting after the passage of this act, or as soon thereafter as practicable, to elect an officer for their parish, who shall hold his office during the pleasure of the police jury, to be known as the oyster inspector of said parish, * * * "

Act 121 of 1896

"AN ACT

"To encourage, protect, regulate and develop the oyster industry of the State of Louisiana; to define the rights of riparian proprietors in oyster beds and fisheries on their water front; to provide for the leasing of oyster lands belonging to the State; to provide for the licensing, registration, and de-

signation of vessels engaged therein; to provide for the punishment of persons depredating on oyster grounds, establishing a close season for the fishing of oysters grown in this State; to authorize the police juries of the several parishes in which oyster lands are situated, to pass ordinances to carry out the provisions of this act; to provide for the appointment of an oyster inspector for each of said parishes; to define his duties and powers and fix his salary, to impose penalties for violations of this act; to repeal Act No. 106 of 1886, approved July 8, 1886; an act, No. 110 of 1892, approved July 7, 1892, and all acts or parts of acts in conflict with the provisions of this act.

* * * *

"Sec. 4. Be it further enacted, etc., That any person or persons desiring to locate places for the bedding and planting of oysters upon the water front of any lands owned by the State shall make application to the police jury of the parish in which said lands are situated, stating the number of acres, the description of the place and where situated, accompanied by a map or sketch and proces verbal of survey by the parish Surveyor showing metes and bounds, * * * If any citizen of this State shall be concerned or interested with any person not a citizen of the State in taking, catching, or planting oysters within this State, or shall knowingly permit any person not a citizen of this State to take, catch or plant oysters in his name, he shall be liable to a fine of five hundred ($500.00) dollars, and the vessels or craft so employ-

ed in catching or planting, shall be forfeited. If any person other than a citizen of this State shall take or catch oysters or other shell fish in any manner, or plant oysters in the waters thereof, he shall forfeit five hundred ($500.00) dollars and the vessel, tackle and appurtenances, and any person not a citizen shall be deemed to have violated this section who shall allow oysters purchased by him for sale and laid out as purchased until he has purchased his cargo, to remain so laid down, more than sixty (60) days; provided that no person shall be allowed to lease more than ten (10) acres of State lands suitable for bedding planting or cultivating oysters; the lease herein provided for shall not be assignable or liable to seizure.

"Sec. 5 (Identical to Sec. 5 of act 110 of 1892)

* * * *

"Sec. 7. Be it further enacted, etc., That hereafter it shall not be lawful for any person to take or catch oysters in the waters of this State, with tongs or in any other way, from the first day of May to the first day of September of each year; * * *

* * * *

"Sec. 9. (Similar to sec. 9 of act 110 of 1892)

* * * *

"Sec. 14 (Identical to Sec. 14 of act 110 of 1892)

* * * *

Act 153 of 1902.

"AN ACT

To encourage, protect, regulate and develop the oyster industry of the State of Louisiana; to constitute

the bottoms or beds of the bodies or streams of water along the coast of the Gulf of Mexico within the jurisdiction of the State of Louisiana, a common for the taking of oysters or other shell fish by residents of this State, under certain conditions; to define the rights of riparian proprietors in oyster beds on the water front; to create the Oyster Commission of Louisiana, to determine the qualifications and manner of selection of the members of said Commission and to define its powers and duties; * * * to vest said Commission with the power to control and require said Commission to provide rules and regulations governing the oyster producing beds and the waters of this State and the oyster industry of this State and to empower said Commission to enforce its rules and regulations by fine or imprisonment; to provide for the leasing of oyster lands belonging to the State; * * *

Sec. 1. Be it enacted by the General Assembly of the State of Louisiana, That all of the beds of the rivers, bayous, creeks, lagoons, lakes, bays, coves, sounds and inlets bordering on or connecting with the Gulf of Mexico, and all that part of the Gulf of Mexico within the juridiction of the State of Louisiana shall be, continue, and remain the property of the State of Louisiana; and may be used as a common by all the residents of the State of Louisiana and Louisiana corporations for the purposes of fishing, taking, catching, bedding and raising oysters and other shell fish, subject to the reservations and restrictions, hereinafter to be imposed by this Act and by the Oys-

ter Commission of Louisiana hereinafter created. No grant, sale or conveyance of the lands forming the bottoms or beds of any of said bodies or streams of water, except the conditional leases and dispositions hereinafter provided for, shall hereafter be made by the Register of the State Land Office or by any other official, corporation or person. Nor shall any natural oyster bed or reef, whether same shall ebb bare or not, ever be sold by the State, or by any official, or by any political corporation or subdivision of said State. * * *

Sec. 2. Be it further enacted, etc., That * * * * all leases of bedding grounds made in pursuance of the provisions of Act 110 of 1892, or Act 121 of 1896 shall continue in force and effect up to their expiration without any renewal rights except those conferred by this act, provided such lessees shall, within a period of one hundred and twenty days from the promulgation of this act, file with the Oyster Commission, hereinafter provided for, a copy of their lease and a plan of survey of their leased bedding grounds, pay to the said Commission the rental provided for by this act and subject themselves to such further regulations as said Commission may impose. * * * * *

Sec. 3. Be it further enacted, etc., That the Governor shall appoint, by and with the advice and consent of the Senate, five (5) competent persons from among the qualified voters of the State which said five (5) persons, as commissioners, shall form and constitute the "Oyster Commission of Louisiana," which said Commission is hereby created. * * * * *

Sec. 6. Be it further enacted, etc., That * * * * Said Commission shall elect a Civil Engineer and Surveyor whose compensation shall be fixed by the Commission and whose services, when employed for the surveying and staking out of private bedding grounds, shall be paid by the parties applying for such surveys, at a rate of compensation to be fixed by the Commission. Such Engineer and Surveyor may, by and with the advice and consent of the Commission, appoint the parish Surveyors his deputies. Said Commission shall have authority to employ such Deputy Inspectors, patrolmen and other employees, at salaries to be fixed by said Commission, as may be necessary, to regulate the oyster industry and carry into effect the provisions of this act and the rules and regulations of the Commission. * * * * *

Sec. 8. Be it further enacted, etc., That the said Commission shall acquire such boats, vessels and other property as may be necessary to regulate and control the oyster industry, and as soon as the funds become available for the purpose, said Commission shall establish and maintain, by means of armed vessels, the necessary patrol of the Gulf Coast waters to enforce the police regulations of said Commission, with authority to use such arms as may be necessary to capture any vessel violating the provisions of this act or the rules and regulations of said Commission. * * *

Sec. 10. Be it further enacted, etc., That any person, firm or corporation a bona fide resident of this State desiring to lease a part of the bottom or

beds of any of the waters of this State for oyster bedding or cultivating purposes shall present to the Commission a written application setting forth the name and address of the applicant, the location and amount of bedding or planting ground desired and a plan of survey of said bedding or planting grounds made by the Commission's Surveyor, or one of his Deputies * * *

Sec. 16. Be it further enacted, etc., That for the purpose of carrying into effect the provisions of this act and the rules and regulations of the Oyster Commission, commissioners, inspectors, employees of the Oyster Commission, captains and members of the crew, of all vessels engaged in the oyster industry are hereby constituted peace officers with power to arrest on view without warrant any one violating the provisions of the law or the rules and regulations of the Commission; and it shall be the duty of such captains or crews to lend their assistance, and the assistance of their vessels, to any inspector of the Commission making arrests. * * *"

Act 52 of 1904

"AN ACT

To encourage, protect, regulate and develop the oyster industry of the State of Louisiana, and to increase the revenues of the State therefrom; by recognizing and declaring the ownership of the State in and to the bottom or beds of the bodies or streams of water along the Coast of the Gulf of Mexico, and the waters of the Gulf of Mexico within the jurisdiction of the State

of Louisiana; by prohibiting their alienation in fee simple; by recognizing and declaring the ownership of the State in and to all oysters growing natural thereon; by limiting the rights of riparian proprietors to low water mark; by creating the Oyster Commission of Louisiana, providing for its organization and defining its powers and duties; by constituting said Commission a department of the State government and a political corporation invested with all necessary corporate powers; by providing for the leasing of oyster lands belonging to the State; by providing for the licensing, registration and designation of vessels employed in the oyster industry; * * *

Sec. 1. Be it enacted by the General Assembly of the State of Louisiana, That all the beds and bottoms of the rivers, bayous, lagoons, lakes, bays, sounds and inlets bordering on or connecting with the Gulf of Mexico, and all that part of the Gulf of Mexico within the jurisdiction of the State of Louisiana, and all oysters and other shell fish naturally growing thereon shall be, continue and remain the property of the State of Louisiana, and shall be under the control of the Osyter Commission of Louisiana, hereinafter created, which said Commission may permit of its use by residents of the State of Louisiana, firms composed of residents of Louisiana, and Louisiana corporations, for the purpose of fishing, taking, catching, bedding and raising oysters and other shell fish, subject to the reservations and restrictions herein-

after to be imposed by this act, or hereafter to be imposed by said Oyster Commission of Louisiana. No grant, sale or conveyance of the lands forming the bottoms or beds of said bodies or streams of water, except the conditional leases and dispositions hereinafter provided for, shall hereafter be made by the Register of the State Land Office, or by any other official, political corporation or person. * * *

Sec. 3. Be it further enacted, etc., That the Governor shall appoint, by and with the advice and consent of the Senate, five competent persons from among the qualified voters of this State, which said five (5) persons, as commissioners, shall form and constitute the "Oyster Commission of Louisiana," which said Commission is hereby created. * * Said Commission shall be and is hereby vested with full and complete power and authority on behalf of the State of Louisiana, to control the oyster producing territory of, and the oyster industry carried on in this State, except to such extent as its powers and discretion shall be limited by the provisions of this Act, and subsequent amendments of this Act by the State Legislature; and to enforce such rules and regulations as it may adopt, * * *

Sec. 4. Be it further enacted, etc., That the said Commission shall, in addition to the powers herein conferred, be constituted as a Department of the State Government for the purpose of management of the State's oyster fields and water bottoms * * *

Sec. 6. Be it further enacted, etc., that * * * said Commission may elect a Civil Engineer and Surveyor, to be known as the Chief Surveyor, whose compensation to be fixed by the Commissioners annually shall not exceed two thousand five hundred dollars ($2,500) per annum, and whose service shall be devoted exclusively to the work of the Commission. The Commissioners shall appoint such deputy surveyors as may be necessary, which said deputies shall survey the bedding grounds of applicants, and shall receive for such service, such compensation, payable by the applicant, as the Commission may determine. Said Commission shall have authority to employ such Deputy Inspectors, Collectors, Patrolmen and other employees, at salaries to be fixed by said Commission, as may be necessary to regulate the oyster industry and carry into effect the provisions of this act and the rules and regulations of the Commission. * * *

Sec. 8. Be it further enacted etc., That the said Commission shall acquire such boats, vessels and other property as may be necessary to regulate and control the oyster industry, and as soon as the funds become available for the purpose, said Commission shall establish and maintain, by means of armed vessels, the necessary patrol of the Gulf Coast with authority to use such arms as may be necessary to capture any vessel or person violating the provisions of this act, or the rules and regulations of said Commission. All the property now owned by the Oyster

Commission of Louisiana organized under Act 153 of 1902, shall revert to and become the property of the Oyster Commission of Louisiana, organized under the provisions of this act. * * *

Sec. 10. Be it further enacted, etc., That the said Commission shall have power to lease any water bottoms in the State of Louisiana, as described in Section 1 of this act, and desirable for purposes of bedding, planting and cultivating or propagating oysters. No natural oyster reefs shall be leased. These leases can only be made to citizens of Louisiana, Louisiana firms, composed of citizens of Louisiana and Louisiana corporations domiciled in this State. * * *

Sec. 14. Be it further enacted, etc. * * *

The water bottom around the Biological Station, situated in the Parish of Cameron, near the mouth of the Calcasieu River, shall be reserved for experimental purposes to the following extent, to-wit: To a distance of a quarter of a mile above said station to the full extent of the river, and down the river to the Gulf to the full extent of said river, and to a distance of one mile East and West of the mouth of the river, and extending to the full limit in the Gulf. * * * "

Act 144 of 1908

AN ACT

"To establish a Commission for the Conservation of Natural Resources; to provide for its administration and duties; and repealing all laws in conflict or inconsistent with its provisions.

Whereas, the recent Conference of Governors, in the White House declared their firm conviction that the conservation of natural resources is a subject of transcendant importance; that these resources include the waters, the forests, the land, and minerals; that the nation, the State and the people should co-operate in conservation, and,

Whereas, the Conference declared that this co-operation should find expression in suitable action by the Congress within the limits of, and co-extensive with, the national jurisdiction of the subject, and, complementary thereto, by the legislatures of the several States within the limits of and co-extensive with, their jurisdiction, and,

Whereas, the Conference recommended the appointment by each State of a Commission on the Conservation of Natural Resources, to co-operate with each other and with any similar commission of the Federal government, therefore,

Section 1. Be it enacted by the General Assembly of the State of Louisiana, That a board of commissioners to be known as the "Commission on Natural Resources" is hereby created, to be composed

of seven members, two of whom shall be ex-officio the Professor of Horticulture of the State University, and the Chief Engineer of the State Board of Engineers; the other five to be appointed by the Governor, who shall designate from among the members of president and a secretary. * * *

Section 2. Be it further enacted, etc., That it shall be the duty of the Commission provided for in Section 1 of this Act to inquire into and report on the forest conditions of the State of Louisiana, with reference to the preservation, the reforesting, of denuded lands, the effect of the destruction of forests on climatic conditions and waterways, and their control; the drainage and reclamation of swamp lands; and the prevention of waste in the extraction of oil, gas and other minerals, and generally on all matters pertinent to these subjects; to report to the General Assembly in 1910 the result of such investigations, to advise what legislation for the conservation of natural resources may be advisable, and perform such other duties as may be incidental thereto."

* * * * *

Act 24 of 1910

AN ACT

"For the protection of fish, by making it a misdeameanor to throw or place dynamite, lyddite, gun powder cartridges, cannon crackers or any other explosive or to throw or place acids, or lime which have not been used in manufacturing or

commercial processes, india berries, saw dust, green walnuts, walnut leaves, or any other deleterious substance in the waters of the State and to provide for the punishment of violations thereof.

Section 1. Be it enacted by the General Assembly of the State of Louisiana, that in order to prevent the killing of fish, it shall be unlawful for any person to throw or place dynamite, lyddite, gun powder cartridges, cannon crackers, or any other explosive or to throw or place acids, or lime which have not been used in manufacturing or commercial processes, india berries, saw dust, green walnuts, walnut leaves, or any other deleterious substance into, or on, or where it will run into, the waters of the bayous, lagoons, ponds, lakes, bays, rivers, sounds, or in the Gulf of Mexico within the territorial jurisdiction of this State."

Act 132 of 1910

AN ACT

"For the protection of fresh and salt water fish; to provide the manner in which said fish may be caught; to fix the seasons in which they may be caught; to authorize the Board of Commissioners for the Protection of Birds, Game and Fish, to issue licenses to fish; to build and conduct fish hatcheries and do all necessary work to conserve the fresh and salt water fish of the State, and to fix penalties for violations thereof.

Section 1. Be it enacted by the General Assembly of the State of Louisiana, That all fresh and

salt water fish found in the waters of the State shall be and are hereby declared to be the property of the State." * * *

ACT 172 of 1910

AN ACT

"Making appropriation to defray the expenses of the Conservation Commission and to amend and reenact Act No. 144 of the Session of 1908, approved July 2, 1908, entitled "An Act to establish a Commission for the Conservation of Natural Resources; to provide for its maintenance, administration and duties; and repealing all laws in conflict or inconsistent with its provisions."

* * * * *

Act 189 of 1910

AN ACT

"To regulate the oyster industry of the State of Louisiana, by recognizing and declaring the ownership of the State to all water bottoms or beds of streams, bayous, lagoons, lakes, bays, rivers and canals, along the coast of the Gulf of Mexico, and of the Gulf of Mexico, within the jurisdiction of Louisiana by prohibiting their alienation in fee simple; by recognizing and declaring the ownership of the State in and to all oysters growing thereon by limiting the riparian oysters to low water mark; by providing for the leasing of oyster lands of water bottoms belonging to the State; by recognizing leases already made on the same, by providing for the licensing, registering and designation of vessels employed in

the oyster industry; by levying a special assessment or privilege tax on oysters taken from Louisiana waters and a license tax on persons, firms, or corporations, and vessels engaged in the oyster industry; by providing the manner of collecting, handling, depositing and disbursing the revenues derived therefrom; by providing for the protection of natural oyster reefs, and the designation of oyster preserves; by providing the manner of shipping or taking oysters out of the State; and by providing such other rules and regulations necessary to properly carry out the purposes of this Act; by providing penalties and forfeitures for the violations of this Act; and by repealing and superseding all laws or parts of laws in conflict herewith, more especially Act No. 52 as amended by Act 178 of 1906, Act 167 of 1908 and Act 291 of 1908.

Section 1. Be it enacted by the General Assembly of the State of Louisiana, That all beds and bottoms of rivers, bayous, lagoons, lakes, bays, sounds, and inlets bordering on or connecting with the Gulf of Mexico, and that part of the Gulf of Mexico within the jurisdiction of the State of Louisiana, including all natural oyster reefs, and all oyster and other shell fish growing thereon shall be, continue and remain the property of the State of Louisiana, except as otherwise provided, and shall be under the exclusive control of the Board of Commissioners for the Protection of Birds, Game and Fish. The Board may permit the use of the said bottoms and reefs for the purpose of fishing, taking, bedding and raising oys-

ters and other shell fish, subject to the restrictions imposed by law, and the regulations of said Board, in so far as they do not conflict with the laws of the State.

* * * * * * * *

Section 3. Be it further enacted, etc., That the Board of Commissioners for the Protection of Birds, Game and Fish shall have the power to lease any and all water bottoms and natural reefs as described in Section 1 of this Act. * * *

Section 6. * * * *

No person, firm or corporation, shall lease, hold or control more than one thousand (1,000) acres of said water bottoms, except that when said lessee owns or operates more than one canning plant he or they may be permitted to lease an additional 500 acres of water bottoms and reefs for a second plant, an additional 300 acres for a third plant, an additional 200 acres for a fourth plant * * * *

* * * * * * * *

Section 15. Be it further enacted, etc., That it shall be unlawful for any person, firm, or corporation to take or catch oysters on the natural reefs of the State, or to have such oysters in possession except under the rules and regulations of the Board of Commissioners for the Protection of Birds, Game and Fish, and the onus shall be upon the accused to establish that any oysters in his or their possession were taken from leased water bottoms. For the purposes of this Act, all oysters in possession of any person, firm or corporation, in this State shall be deemed to be oysters fished in Louisiana waters.

* * * * * *

Section 18. * * * *

No person shall take a cargo or any part of a cargo of oysters in the shell, out of the State on any vessel or water craft, or shall fish, catch or gather a cargo or any part of a cargo of such oysters, with the intent to take them out of this State into any other State for any purpose. * * * *

* * * * * * * *

Section 21. Be it further enacted, etc., That the Board of Commissioners for the Protection of Birds, Game and Fish shall acquire such boats, vessels and other property as may be necessary to regulate and supervise the work of the Board, and as soon as the funds become available for the purpose, said Board shall establish and maintain, by means of armed vessels, the necessary patrol of the Gulf Coast with authority to use such arms as may be necessary to capture any vessel, person or persons violating the provisions of this Act.

Section 22. Be it further enacted, etc., That for the purpose of carrying into effect the provisions of this Act, and the rules and regulations of the Board of Commissioners for the Protection of Birds, Game and Fish, Commissioners, inspectors, employees of the Board, captains and members of the crews of all vessels in the service of the Board, are hereby constituted peace officers with the power of arrest on view, without warrant, any one violating the provisions of the law, and it shall be the duty of all cap-

tains and crews to lend their assistance and the assistance of their vessels to any employee of the Board in making arrests."

* * * * * * *

Act 245 of 1910

AN ACT

"For the protection of salt water shrimp; to provide the manner in which said crustaceans may be caught; to fix the season in which they may be caught; to authorize the issuance of license to seine, and to provide penalties for the violations of this Act.

Sec. 1. Be it enacted by the General Assembly of the State of Louisiana, That all salt water shrimp found in the waters of this State shall be and are hereby declared to be the property of the State.

Sec. 2. Be it further enacted, etc., That no person within the State of Louisiana, shall catch or have in possession, living or dead, any salt water shrimp, or part thereof, or purchase, sell, or offer for sale, any such shrimp, or part thereof after same have been caught except as otherwise permitted.

Sec. 3. Be it further enacted, etc., That it shall be unlawful for any person, firm or corporation, to catch salt water shrimp by using a seine or other device which exceeds one hundred and twenty fathoms (120) in length, except as may be provided herein.

* * *

Sec. 7. Be it further enacted, etc., That it shall be unlawful for any person, firm or corporation, res-

ident, domiciled within the State, to set or draw, or attempt to set or draw any seine or other device, of fifty fathoms (50) and upwards in length, in any waters of the State for the purpose of catching salt water shrimp, unless a license fee has been paid thereon at the rate noted herein, and is at all times had in possession to be shown on demand of any warden or officer. Said license to be issued by the Board of Commissioners for the Protection of Birds, Game and Fish, and the process thereof to be turned into the State Treasury, and placed to the credit of said Board. * * * *

Sec. 8. Be it further enacted, etc., That it shall be unlawful for any non-resident, or unnaturalized foreign resident, firm or corporation not domiciled within the State, to set or draw, or attempt to set or draw any seine or other device, in any waters of the State for the purpose of catching salt water shrimp unless a license fee has been paid thereon at the rate noted herein, and is at all times had in possession to be shown on demand of any warden or officer. * * *

On seines over one hundred and seventy-five (175) fathoms in length an additional license of $5.00 for each twenty fathoms." * * * *

Act 127 of 1912

AN ACT

"To create and establish a Conservation Commission of Louisiana, defining its duties and powers and constituting it a department of the Government; to provide for the necessary employees and defining their qualifications, duties and powers in relation to the protection of birds, fish, shell fish and wild quadrupeds; forestry and mineral resources of the State; to provide for the payment of the salaries and expenses of the said Commission; to issue licenses and levy and collect the charges thereon, and to provide for the revenues to maintain and support the same; to provide for the establishment of public and private preserves and propagating grounds for game and fish; to authorize the Conservation Commission herein created to discharge the duties and functions heretofore exercised by the Board of Commissioners for the protection of birds, game and fish, and the Conservation Commission heretofore created, and the duties heretofore assigned to the Department of Forestry and the Department of Mining and Minerals; to authorize said commission to represent the aforesaid other commissions either as defendant in any litigation that might be pending; to provide penalties for the violation of this act, and to repeal all laws or parts of laws in conflict with or inconsistent with the provisions of the act.

Section 1. Be it enacted by the General Assembly of the State of Louisiana, That the Conservation Commission is hereby created, composed as follows: * * *

Section 2. Be it further enacted, etc., That the Conservation Commission of Louisiana is hereby constituted a department of the State government for the purpose of the protection, management, and conservation of the oyster fields and water bottoms of the State; to protect the birds, fish, shell fish and wild quadrupeds of the State, and the natural and mineral and forestry resources of the State and to see that all laws relative thereto are enforced, and, as such, it is hereby created a body politic or political corporation invested with all powers inherent in such corporation. * * *

Said Commission shall adopt by-laws for its own government and the government of its employees, it shall adopt rules and regulations for comprehensive control of birds, fish, shell fish, and wild quadrupeds, and mineral and soil and natural resources of the State which said by-laws or rules and regulations shall not be inconsistent with or contrary to the provisions of this act. * * *.

* * * It shall also protect and propagate, when possible all species of birds, and game of whatever description and establish preserves and hatcheries, to be maintained and operated under the control of the Commission, and it shall be its duty to rigidly enforce all laws relative to the bedding, fishing, selling, shipping and canning of oysters and of all laws relative to the protection and propagation and selling of birds and game and of all laws relative to the protection and propagation and sale of all species of fish

in this State whether they shall be salt water or fresh water fish, whether they shall be shell fish or fish of any other description and of all laws relative to diamond-back terrapin, shrimp, and, in fact shall have full power and control over birds and animals, whether they be game or fur-bearing or not; over all fish whether they shall be salt water or fresh water fish; over diamond-back terrapin shrimp and oysters of this State found or being within the borders of this State, or within any of the waters of the State, whether said waters be rivers, lakes, bayous, lagoons, bays or gulfs. It shall, likewise enforce all laws relating to the natural mineral and forestry resources of this State.

* * *

Section 8. Be it further enacted, etc., That the Conservation Commission shall acquire such boats and other property as may be necessary to regulate and supervise the work of said Commission, and as soon as the funds become available for the purpose, the Conservation Commission shall establish suitable armed patrols on the boundary lines between the waters of Louisiana and Mississippi to prohibit the violation of any of the laws of this State relating to birds, shell fish and wild quadrupeds of this State.

Section 9. Be it further enacted, etc., That it shall be the duty of the said Conservation agents to see that every person hunting, trapping, seining, shipping or dealing in any way in any of the natural resources of this State in the territory assigned to each agent for which a license must be obtained as

hereinafter provided has in his possession, or is the owner of any official license as provided by law, except in case of a resident hunting on his own lands or on lands leased for agricultural purposes or on lands inside the ward in which his domicile is located.

* * * * * *

Section 11. Be it further enacted, etc., That the Conservation Commission shall have power to appoint competent men throughout the State to be known as "Special Conservation Agents," who shall possess all rights and powers given by the law to the regular Conservation Agent except the right to search without warrants, and they shall be subject to all requirements and regulations both of the law and the rules of the Conservation Commission, provided that such special Conservation Agent shall be in no way entitled to recompense from either the parish, or State or Commission for services rendered or expenses incurred in the performance of their duty. All sheriffs, constables and Peace Officers shall have the power as Conservation Agent under this Section except the right to search without warrant, and shall receive one-half of all fines collected for violation of the Game and Conservation Laws of this State that may be reported by them."

* * *

Act 168 of 1912

AN ACT

"To amend and re-enact Sections 3, 4, 7, 8, and 9 of Act No 245 of the General Assembly of the

State of Louisiana, approved July 7, 1910, being an Act entitled an Act for the protection of salt water shrimp; to provide the manner in which said crustaceans may be caught; to fix the season in which said crustaceans may be caught; to authorize the issuance of licenses to seine, and to provide penalties for the violation of this Act.

* * *

Sec. 8. Be it further enacted, etc., That it shall be unlawful for any non-resident, firm or foreign corporation or firm or corporation not domiciled within this State, to set or draw, or attempt to set or draw any seine or other device in any waters of the State for the purpose of catching salt water shrimp, unless a license fee has been paid thereon at the rate noted herein. * * *

On all seines from sixty (60) fathoms to two hundred (200) fathoms, Fifty Dollars; over two hundred (200) fathoms, for each additional twenty fathoms, five dollars. Provided, that should any salt water fish or crustaceans happen to be caught in said seine or seines drawn for the purpose of catching salt water shrimp, no separate or additional license shall be exacted therefor from any non-resident, firm or corporation not domiciled within the State."

* * * * * *

Act 183 of 1912

AN ACT

"To prohibit the use of fish drying platforms during the months of May, June and July; to limit the

length of certain fish to be taken and had in possession for sale; to prohibit interference with persons engaged in the lawful fishing and sale of salt water fish; and to fix the licenses to be paid by salt water fishermen; and to prescribe penalties for the violation of provisions herein contained.

Section 1. Be it enacted by the General Assembly of the State of Louisiana, That it shall be and is hereby declared unlawful for any person engaged in commercial fishing to erect or operate for commercial purposes during the months of May, June and July, any fish drying platforms or other contrivance for the drying of fish taken during such months.

Section 2. Be it further enacted, etc., That it shall be unlawful for any person to take or to have in his possession for sale at any time any salt water fish under the length of eight inches other than bream, croakers or sea-perch.

Section 3. Be it further enacted, etc., That no person engaged in the fishing of salt water fish for commercial purposes shall be molested or interfered with either on the water or at the docks of this State, so long as they respect the prohibitions herein contained, and possess the license herein provided.

Section 4. Be it further enacted, etc., That whoever shall violate any of the provisions of this act shall, upon conviction thereof, be punished by fine or imprisonment or both at the discretion of the Court.

Section 5. Be it further enacted, etc., That no

license shall be charged for seining for salt water fish with seines of less than one hundred and thirty fathoms length, and for the operation of seines of greater length, a license of five dollars shall be paid for seines of one hundred and thirty fathoms or over and less than two hundred fathoms seines from two hundred fathoms to three hundred fathoms in length shall pay a license seven and one half dollars; all seines over three hundred fathoms shall pay a license of seven and one half dollars with an additional one dollar for each twenty fathoms over three hundred fathoms in length."

Act 42 of 1914

AN ACT

"To authorize the Conservation Commission to grant the right and privilege to any person, firm or corporation to take oyster shells or shell deposit from the shell reefs of this State; to fix the minimum price per cubic yard for such shells or deposits for which such right or privilgees may be sold and granted; to provide certain terms and conditions under which such right or privilege may be granted, and to authorize the Conservation Commission to require or provide additional terms and conditions for the protection of the rights of property of the State.

Sec. 1. Be it enacted by the General Assembly of the State of Louisiana, That the Conservation Commission be and is hereby authorized and empowered to sell and grant unto any person, firm or corporation

the right and privilege of taking oyster shell deposits from any of the shell reefs within the boundaries of this State and located in or on the borders of the Gulf of Mexico, or of any of the bays, lakes, inlets or waterways connected with or emptying into the said gulf, or into any such bays, lakes or inlets."

* * *

Act 193 of 1916

AN ACT

"To amend and re-enact Sections 4, 5, 6, 7 and 8 of Act No. 245 of the General Assembly of the State of Louisiana for the year 1910, and to repeal Section 10 of this same act, and entitled an act for the protection of salt water shrimp; to provide the manner in which said crustaceans may be caught; to fix the season in which they may be caught; to authorize the issuance of licenses to seine, and to provide penalties for the violation of this Act, as amended and re-enacted (Sections 4 and 7) of Act No. 168 of 1912 and by Act No. 59 of 1914, and as amended (Section 8) of Act No. 168 of 1912.

* * *

Sec. 7. Be it further enacted, etc., That it shall be unlawful for any resident person, firm or corporation, or firm or corporation domiciled within the State to set or draw or attempt to set or draw any seine of forty (40) fathoms, and upward in length, or any other device, in any waters of the State for the purpose of catching salt water shrimp, unless a license fee has been paid thereon at the rate noted herein * * *

Sec. 8. Be it further enacted, etc., That it shall be unlawful for any unnaturalized foreign-born resident or for any non-resident firm or corporation not domiciled within the State, to set or draw, or attempt to set or draw, any seine of forty (40) fathoms and upward in length, or any other device, in any of the waters of the State, for the purpose of catching salt water shrimp, unless a license fee has been paid thereon at the rate noted herein * * * On all seines from 40 fathoms to 200 fathoms in length, fifty & No/100 ($50.00) dollars; from 200 fathoms to 300 fathoms in length, seventy five & No/100 ($75.00) dollars; over 300 fathoms seventy five and no/100 ($75.00) dollars and in addition thereto five and no/100 ($5.00) dollars for each additional twenty (20) fathoms or fraction thereof. * * * "

Act 6 of 1917

AN ACT

"To make it unlawful for any person or persons, knowingly or wilfully to take or carry away oysters, shells, or clutch from any leased water bottoms belonging to, and within the jurisdiction of, the State of Louisiana, without the permission of the lessee thereof; to define such offense as a misdemeanor; to provide for the punishment for the violation of the provisions of this Act, and to prescribe and fix the penalty for such violation; and to repeal all laws or parts of laws, contrary to or inconsistent herewith.

Sec. 1. Be it enacted by the General Assembly of the State of Louisiana, That it shall be unlawful

for any person or persons knowingly or wilfully to take, carry away, or attempt to take or carry way, without the permission of the lessee, any oysters, shells, or clutch from the water bottoms of the Gulf of Mexico, or the lakes, bays, inlets, lagoons, rivers, bayous, or other waters tributary thereto or connected therewith, within the jurisdiction of the State of Louisiana, which said bottoms are, at the time of such taking, let or leased to any person, firm, or corporation under the laws of Louisiana, for the purpose of bedding, planting propagating, or cultivating oysters."

* * *

Act 86 of 1918

AN ACT

"For the protection of salt water shrimp; to provide the manner in which said crustaceans may be caught; to fix the seasons in which they may be caught; to authorize the issuance of licenses to seine, and to provide penalties for the violation of this Act.

Sec. 1. Be it enacted by the General Assembly of the State of Louisiana, That all salt water shrimp found in waters of this State shall be and are hereby declared to be the property of the State.

Sec. 2. Be it further enacted, etc., That no person within the State of Louisiana shall catch or have in possession, living or dead, any salt water shrimp, or part thereof, or purchase, sell, or offer for sale, any such shrimp, or part thereof, after same have been caught, except as otherwise permitted.

Sec. 3. Be it further enacted, etc., That it shall be unlawful for any persons, firm or corporation to catch salt water shrimp by using a seine which exceeds forty (40) fathoms in length, or other device, except by permission of the Department of Conservation as to such devices; provided the using of trawls in any of the inside waters of the State at any time shall be prohibited when in the opinion of the Department of Conservation the using of said trawls in the inside waters of the State for taking salt water shrimp is detrimental to the interests of the State, except as may be provided herein. * * *

* * *

Sec. 7. Be it further enacted, etc., That it shall be unlawful for any person, firm, or corporation, resident or domiciled in this State to set or draw, or attempt to set or draw any seine of forty (40) fathoms and upwards in length or to set or draw, or attempt to set or draw any other device, in any waters of the State for the purpose of catching salt water shrimp, unless an annual license fee has been paid thereon at the rate noted herein. * * *

Sec. 8. Be it further enacted, etc., That it shall be unlawful for any unnaturalized foreign-born resident or any non-resident, firm or foreign corporation or firm or corporation not domiciled within this State, to set or draw, or attempt to set or draw any seine of forty (40) fathoms and upwards in length or to set or draw or attempt to set or draw any other device in any waters of the State for the purpose of

catching salt water shrimp, unless an annual license fee has been paid thereon at the rate noted herein * * * On all seines from 40 fathoms to 200 fathoms in length, fifty and 00/100 ($50.00) dollars; from 200 fathoms to 300 fathoms in length, seventy-five and 00/100 ($75.00) dollars; over 300 fathoms in length, seventy five and 00/100 and in addition thereto five and 00/100 ($5.00) dollars for each additional twenty (20) fathoms or fraction thereof; * * *"

Act. 105 of 1918

AN ACT

"To amend and re-enact Sections 1, 8 and 10 of Act 127 of 1912, as amended by Act 66 of 1916 and Act 45 of 1916, entitled:

To create and establish a Department Conservation, defining its duties and powers and constituting it a department of the Government to provide for necessary employees and defining their qualifications, duties and powers in relation to the protection of birds, fish, shell fish and wild quadrupeds; forestry and mineral resources of the State * * *

* * *

Sec. 2. Be it further enacted, etc., That Section 8 of the Act of 127 of 1912, be and the same is hereby amended and re-enacted to read as follows:

"That the Commissioner of Conservation shall require such boats and other movable property as may be necessary to regulate and supervise the work of said Department of Conservation, and shall estab-

lish suitable armed patrols on the waters of the State or on the land, to prevent the violation of any of the conservation laws of the State relating to birds, wild quadrupeds, and other game, fish, shell fish, oysters, forests, mines and minerals, and waterbottoms; and shall have the power to appoint competent men throughout the State to be known as 'Conservation Agents,' with the authority to carry arms concealed while in the performance of their duties, who shall have full power under the law to enforce all laws for the protection of the natural resources of the State."

* * * * * *

Act 106 of 1918

AN ACT

"To amend and re-enact the title and Sections 2, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 22, 34, 35, 36, 39, 63, and 64, of Act No. 204 of the General Assembly of 1912, as amended by Acts 47 of 1914, 174 of 1916, 258 of 1916, and 272 of 1916, entitled: 'An Act to conserve the natural resources of the State of Louisiana, including the natural resources of the State of Louisiana, including the natural wild life on land and in the waters of the State, and, also, the soil, mineral and forestry resources of the State; to provide a code of laws governing the conservation of the natural resources of the State; to vest in the State the title to all wild life of the State and to provide in what manner such wild life may be subject to private ownership * * *"

Act 139 of 1924

AN ACT

"To amend and re-enact the title and section 1 and 6 of Act No. 54 of 1914 entitled; 'An Act to regulate the oyster industry of the State of Louisiana, by recognizing and declaring the ownership of the State to all water bottoms or beds of streams, bayous, lagoons, lakes, bays, rivers and canals, along the coast of the Gulf of Mexico within the jurisdiction of Louisiana, by prohibiting their alienation in fee simple, by recognizing and de-declaring the ownership of the State in and to all oysters growing thereon by limiting the riparian owners to ordinary low water mark; by providing for the leasing of the oyster lands of water bottoms belonging to the State; * * *

* * *

OYSTER REEFS AND BOTTOMS

Sec. 1. That all beds and bottoms of rivers, bayous, lagoons, lakes, bays and sounds and inlets bordering on, or connecting with the Gulf of Mexico, and that part of the Gulf of Mexico within the the jurisdiction of the State of Louisiana, including all natural oyster reefs and all oysters and all other shell fish growing thereon, shall be, continue and remain the property of the State of Louisiana, except as otherwise provided, and shall be under the exclusive control of the Conservation Commission of Louisiana. The Commission may permit the use of said bottoms and reefs for the purpose of fishing, taking, bedding and raising oysters and all other shell fish, subject to the restrictions imposed by law, and the regulations

of said Commission, in so far as they do not conflict with the laws of the State, and nothing in this Act shall be so construed as affecting in any way the leasing of said water bottoms for mineral purposes under the provisions of Act 30 of the Extra Session of 1915.

No grant, sale or conveyance of the lands forming the bottoms of said bodies or streams of water shall hereafter be made by the Register of the Land Office, by any other official or by a subordinate political corporation.

ACT 258 of 1926.

AN ACT

"To declare all oysters and parts thereof in the waters of the State to be the property of the State of Louisiana, and to provide the manner and extent of their reduction to private ownership; to encourage, protect, conserve, regulate and develop the oyster industry of the State of Louisiana; to provide penalties for violations of the provisions of this Act and to repeal all laws in conflict herewith.

BOTTOMS AND OYSTERS BELONG TO STATE

Sec. 1. Be it enacted by the Legislature of Louisiana, That all beds and bottoms of rivers, streams, bayous, lagoons, lakes, bays, sounds and inlets bordering on, or connecting with the Gulf of Mexico, in this State, and that part of the waters of the Gulf of Mexico, within the territorial jurisdiction of the State of Louisiana, including all oysters and other

shell fish and parts thereof, grown thereon, either naturally or cultivated, and all oysters in the shells after the same shall have been caught or taken therefrom, shall be, continue and remain, the property of the State of Louisiana, until the title thereto shall be divested in the manner and form herein authorized; and shall be under the exclusive control of the Department of Conservation of the State of Louisiana until the right of private ownership shall vest therein, as herein provided.

MINERAL RIGHTS

Nothing in this Act shall be so construed as affecting in any way the leasing of said waters for mineral purposes under the provisions of Act No. 30 of the Legislature of 1915, providing that if the mineral rights on any water bottom previously leased for oyster culture are granted by the State it shall be done only with the written consent previously obtained of the lessee of such water bottoms for oyster culture purposes, or by previous compensation, of adequate amount, paid to said oyster lessee by said mineral lessee for any and all damages sustained by said oyster lessee.

NO SALE OF BOTTOMS TO BE MADE

No grant, sale or conveyance of the lands forming the bottoms of water shall hereafter be made by the Register of the State Land Office, or by any other official, or by any subordinate political corporation. The rights of the owners or occupants of lands on the shores of any of the waters hereinbefore describ-

ed shall extend to the ordinary low mark only and no one shall own in fee simple any bottoms of lands, covering the bottoms of water hereinbefore described.

WHO MAY TAKE OYSTERS AND LEASE BEDDING GROUNDS

Section 2. That the right to catch and take, can, pack, shuck or deal in or transport oysters from the waters of this State, and the right to lease bedding grounds for the cultivation and propagation of oysters for any of said purposes within any waters within the territorial jurisdiction of the State is hereby granted to any bona fide resident of this State * * * No person, firm, association or corporation, not a resident of or domiciled in this State is, or shall be, permitted to catch, take, can, pack, shuck, deal in or transport any oysters taken from the waters of this State, or lease any bedding grounds for the cultivation and propagation of oysters for any of the above purposes. * * * *

OYSTER SHELLS OR OYSTERS IN SHELLS NOT TO BE SHIPPED OUT OF STATE

Section 3. That it shall be unlawful for any persons, firm or association, or corporation to ship beyond the limits of this State any oysters, caught or taken from the waters of this State, while the same are in the shells, or to export from this State, any raw oyster shells. Such oyster shells are hereby declared to be the property of the State as one of its natural resources

necessary for use as clutch in the propagation and development of the oyster industry in the State in order that a valuable food supply for its citizens may be conserved and developed. * * * * * * *

* * *

Act 67 of 1932

AN ACT

"To declare all bi-valves and parts thereof in the waters of the State to be the property of the State of Louisiana; to provide the manner and extent of their reduction to private ownership; to encourage, protect, conserve, regulate and develop the bi-valve industries of the State of Louisiana; and to provide penalties for violation of the provisions of this Act and to repeal all laws in conflict herewith

Sec. 1. Be it enacted by the Legislature of Louisiana, That all beds and bottoms of rivers, streams, bayous, lagoons, lakes, bays, sounds, and inlets bordering on, or connecting with the Gulf of Mexico, within the territorial jurisdiction of the State of Louisiana, including all oysters and other shell fish and parts thereof, grown thereon, either naturally or cultivated, and all oysters in the shells after the same shall have been caught or taken therefrom, shall be, continue and remain the property of the State of Louisiana, until the title thereto shall be divested in the manner and form herein authorized; and shall be under the exclusive control of the Department of Conservation of

the State of Louisiana until the right of private ownership shall vest therein, as herein provided. * * * * * * *

Sec. 4. That the Department of Conservation shall have the power to lease to any resident, any firm composed or residents of this State, or to any corporation domiciled in or organized under the laws of this State, any and all water bottoms and natural reefs in the waters of this State, under the limitations herein stipulated. * * * * * *

Sec. 6 * * * The benefits of this Act and the restrictions thereof, shall extend to all leases of oyster bedding grounds heretofore made by the State through the Police Juries, the Oyster Commission, the Board of Commissioners for the Protection of Birds, Game and Fish, the Conservation Commission of Louisiana, and the Department of Conservation of Louisiana, and upon the termination of such original leases, such tenants shall have the right of renewing their leases, under the provisions and restrictions of this Act. * * * * * *

Sec. 21. That the Department of Conservation shall acquire such boats, vessels and other property as may be necessary to regulate and supervise the work of the Department, and shall establish and maintain by means of armed vessels, the necessary patrol of the waters described in Section 1 of this Act with authority to use such arms and force as may

be necessary to capture any vessel, or person or persons violating any of the provisions of this Act."

* * *

Act 68 of 1932

AN ACT

"To conserve and protect fish and all other aquatic life of commercial or economic value, existing in this State, excepting alligators and commercial salt water shrimp; declaring the title to same vested in the State in its sovereign capacity; to regulate the time, manner, extent and conditions under which the taking, possessing, transporting and disposing of same shall be lawful; to fix penalties for the violation of the provisions of this Act; and to repeal certain laws or parts of laws in conflict therewith.

* * *

Sec. 2. The ownership of all fish, as defined herein, or the parts thereof, or their products, existing in the State of Louisiana shall be and are hereby declared to be in the State of Louisiana in its sovereign capacity, and shall not be taken, sold or had in possession, except as otherwise permitted herein, and the title of the State of Louisiana to all such fish, even though taken in accordance with the provisions of this Act, shall always be and remain in the State of Louisiana for the purpose of regulating and controlling the use and disposition thereof.

Sec. 3. The Exclusive control of the fisheries and the fishing industry of Louisiana shall be vested in the Department of Conservation of the State of Louis-

iana, which shall be required to enforce the provisions of the laws regulating said fisheries and said industries, and all fish taken, possessed or transported contrary to the provisions of this Act, shall when found, be confiscated by any Conservation Agent, or other officer duly authorized to enforce the conservation laws.

* * *

Sec. 5. For the purpose of this Act, the waters of the State of Louisiana shall be divided into two classes; Fresh Waters and Coastal Waters. The fresh waters shall include all waters in which there is no regular ebb and flow of the tide. The coastal waters shall include all waters within which the tide regularly ebbs and flows.

Act 206 of 1932

AN ACT

"Relative to the sea foods industries of the State of Louisiana, authorizing the Commissioner of Conservation of Louisiana, in his discretion, to authorize, in the commercial utilization of the sea foods produced from the salt water of the State, such sea foods being the property of the State, the making of contracts by fishermen or canners of these products calculated to develop these industries in the State of Louisiana and to increase the State's revenues therefrom; and to declare such contracts, when so approved, to be legal.

Sec. 1. Be it enacted by the Legislature of Louisiana, That it is hereby declared to be the policy of the State of Louisiana to foster and encourage the

sea foods industries of the State which utilize and convert into valuable articles of commerce the shrimp, oysters and other sea food resources owned by the State in her sovereign capacity, and, from their utilization of which, the State derives large direct revenue in the form of severance taxes."

Act 210 of 1936

AN ACT

"To amend and re-enact Sections 1 and 29 (as amended by Act 116 of 1934) and Section 23 of Act 68 of 1932, entitled: 'An Act to conserve and protect fish and all other aquatic life of commercial or economic value, existing in this State, excepting alligators and commercial salt water shrimp; declaring the title to same vested in the State in its sovereign capacity; * * *

* * *

Act 10 of the Extra Session of 1940

AN ACT

"An Act to declare all shrimp and parts thereof in the waters of the State to be property of the State of Louisiana, and to provide the manner and extent of their reduction to private ownership; to encourage, protect, conserve, regulate and develop the shrimp industry of the State of Louisiana; to provide penalties for the violation of the provisions of this Act, and to repeal all laws in conflict herewith."

Sec. 1. Be it enacted by the Legislature of Louisiana, That all salt water shrimp existing in the waters of this State, and the hulls and all parts of said

salt water shrimp shall be and are hereby declared to be the property of the State; until the title thereto shall be divested in the manner and form herein authorized and shall be under the exclusive control of the Department of Conservation of the State of Louisiana * * *

* * *

Sec. 3. That for the purpose of this Act, the waters of the State of Louisana shall be divided into (2) classes, to be known as inside waters and outside waters. The outside waters shall include that portion of the Gulf of Mexico within the boundaries of the State of Louisiana. All other waters of the State within which the tide regularly rises and falls shall be classed as inside waters. In the inside waters shall be included: Timbalier Bay, East Cote Blanche Bay, Atchafalaya Bay, West Barataria Bay, and all other bays and sounds found along the Louisiana Coast of the Gulf of Mexico.

* * *

Sec. 4. * * * It shall be unlawful for any person not a resident of this State, or for any firm or association not composed of residents of this State, or for any corporation not domiciled in or incorporated under the laws of this State, to catch salt water shrimp in the waters of this State, or to can, pack or dry in any factory or on any platform in this State, any salt water shrimp caught from the waters of this State;

* * *

Sec. 15 * * * The Conservation Commissioner

of the State of Louisiana shall have authority to enter into an agreement of reciprocity with Conservation Commissioners of other Departments, or other proper officials of other States, whereby the citizens of the State of Louisiana may be permitted to take or catch shrimp from the waters under the jurisdiction of such other States upon similar agreement, to allow such non-residents to catch shrimp within the boundaries of the State of Louisiana * * *."

Act 143 of 1942

AN ACT

"To declare all salt water shrimp and parts thereof in the waters of the State to be the property of the State of Louisiana, and to provide the manner and extent of their reduction to private ownership; to encourage, protect, conserve, regulate and develop the shrimp industry of the State of Louisiana * * *

Sec. 1. The following definitions and constructions are made part of this Act shall be used in construing its meaning and purposes, to-wit:

'Salt water shrimp' shall mean and include all species of shrimp of commercial or economic value found in the coastal waters of the State and in the Gulf of Mexico contiguous to the Louisiana coast; including the 'common salt water shrimp'; the 'Brazilian' or 'grooved shrimp' (penaeus brasiliensis); and the 'sea bob' or 'six barbes' (Xiphopenaeus kroyeri).

* * *

Sec. 2. The ownership of all salt water shrimp,

as defined herein, or the parts thereof, including their hulls and other products, existing in the waters of the State of Louisiana, shall be and are hereby declared to be in the State of Louisiana, in its sovereign capacity, and shall not be taken, sold, or had in possession, except as otherwise permitted herein, and the title of the State of Louisiana to all such shrimp, even though taken in accordance with provisions of this Act, shall always be and remain in the State of Louisiana for the purpose of regulating and controlling the use and disposition thereof.

Sec. 3. The exclusive control of the shrimp fishery and the shrimp industry of Louisiana shall be vested in the Department of Conservation of Louisiana, which shall be required to enforce the provisions of the laws regulating said fishery and said industry * * * *

* * *

Sec. 5. For the purposes of this Act, the coastal waters of the State of Louisiana shall be divided into two (2) classes, to be known as inside waters and outside waters. The outside waters shall include that portion of the Gulf of Mexico within the boundaries of the State of Louisiana and all outer passes leading into the Gulf in which the water is three (3) fathoms or more in depth. All other waters of the State within which the tide regularly rises and falls or into which salt water shrimp migrate shall be classed as inside waters. The inside waters shall include Chandeleur Sound, Breton Sound, Bastien Bay, Bara-

taria Bay, Timbalier Bay, Terrebonne Bay, Caillou Bay, Atchafalaya Bay, East Cote Blanche Bay, West Cote Blanche Bay, Vermilion Bay and all other bays and sounds along the Louisiana coast, and all other waters in and contiguous to the Gulf of Mexico whether or not partly enclosed by islands, sand pits, marshes, or delta fingers, wherein the water is less than three (3) fathoms in depth, including all waters contiguous to the active delta passes of the Mississippi River wherein the water is less than three (3) fathoms in depth.

Sec. 6. That the right to take salt water shrimp from the waters of this State and the right to process said shrimp are hereby granted to any person resident of this State, to any firm or association composed of residents of this State and operating a shrimp processing plant in this State. It shall be unlawful for any person not a resident of this State, or for any firm or association not composed of residents of this State, or for any corporation not domiciled in or incorporated under the laws of this State, to take, sell or process salt water shrimp in this State * * *

The restriction prohibiting non-resident persons from taking or processing salt water shrimp, shall not apply to the Citizens of any State which, at the time of the passage of Act 314 of 1940, had in effect a reciprocity agreement with this State made under

the authority of Act 10 of the First Extraordinary Session of the Louisiana Legislature of 1940.

* * *

Sec. 9. It shall be unlawful to take salt water shrimp with any seine, trawl or other device with a mesh less than three fourths of an inch (¾") 'bar' or one and one half of an inch (1½") stretched, except as provided for in Section 7, for the taking of shrimp for bait. The use of seines over three thousand (3000) feet is hereby prohibited."

Act 227 of 1944

AN ACT

"To provide for the location, designation, preservation, policing, and administration of 'Oyster seed grounds' in the 'inside waters' of the State of Louisiana; to include therein, as may be selected by the Department of Conservation any water bottoms belonging to the State of Louisiana, such privately owned oyster bedding ground leases as may be found within the designated limits of such locations * * * * *"

* * * * * * * * *

Act 78 of 1946

AN ACT

"An Act to declare all salt water shrimp and parts thereof in the waters of the State to be the property of the State of Louisiana, and to provide the manner and extent of their reduction to private ownerships; to encourage, protect, conserve, regulate and develop the shrimp industry of the State of Louisiana * * *

* * *

Section 3. The exclusive control of the shrimp fishery and the shrimp industry in Louisiana shall be vested in the Department of Wild Life and Fisheries of Louisiana, which shall be required to enforce the provisions of the laws regulating said fishery and said industry, and all shrimp or parts thereof, taken, possessed or transported contrary to the provisions of this Act, shall when found, be confiscated and disposed at discretion by the Department of Wild Life and Fisheries.

To secure the effective protection of shrimp, the Commissioner is required to appoint conservation Agents whose entire time shall be, under the direction of the Commissioner, devoted to the performance of their official duty under this Act. * * *

* * *

Sec. 7. That it shall be unlawful for any person to take, or have in possession, sell or offer for sale any salt water shrimp taken from the inside waters of the State, between the dates of December 15th and March 15th; and from inside and outside waters between June 10th and 2nd Monday in August of any one year. * * *

* * *

Sec. 10. It shall be unlawful to use a shrimp seine or trawl unless an annual license fee has been paid thereon to the Department of Wild Life and Fisheries as follows: On each separate salt water shrimp seine, or other webbing, one hundred (100) feet or more in length and less than five hundred (500) feet,

the license fee shall be ten ($10.00) Dollars per annum; on each separate seine five hundred (500) feet or more and less than two thousand (2,000) feet, or more and not over three thousand (3,000) feet, the license fee shall be Twenty-five ($25.00) Dollars. * * *

No vessel shall be licensed or permitted to engage in commercial shrimp, fishing or freighting operations in Louisiana waters unless the same has been registered at a customs port within the State of Louisiana, and the owner of such vessel is a bona fide resident citizen of the State of Louisiana, which fact shall be shown by written application accompanied by applicant's affidavit; provided, however, that vessels owned or operated by bona fide citizens of any state which has heretofore entered into a reciprocal agreement with the State of Louisiana under the authority of Act 10 of the First Extraordinary Session of the Louisiana Legislature of 1940 may be licensed under this act to engage in such shrimp fishing and freighting operations in only those waters of the State of Louisiana lying east of a line extending south from the mouth of East Pearl River and bounded on the south by the north shore of Bayou LaLoutre and Point Chicot; and east of a line described as running from Point Chicot in a southwesterly direction to Battledore Reef, as shown on United States Coast and Geodetic Survey Chart No. 1272; thence southeasterly to a point 3 miles off-shore from the mouth of Main Pass of Cubit's Gap; thence southeasterly to a point 3 miles off-shore from the mouth of North Pass of Pass A Loutre; thence southerly to a point 3 miles off-shore

from the mouth of Northeast Pass; thence southerly to a point 3 miles off-shore from the mouth of Southeast Pass; thence southwesterly to a point 3 miles southeast from the mouth of South Pass; thence south to the outer boundary of the state of Louisiana.

Bona fide citizens of such reciprocating states, and boats owned by such bona fide citizens, shall be permitted to catch or take and transport shrimp from those waters of the State of Louisiana as so described upon payment of the same licenses and taxes as are levied upon bona fide citizens of the State of Louisiana and upon boats owned by them.

* * *

"* * * For the purpose of this Act the jurisdiction of the courts of any parish shall extend to the limits of the State's sovereignty over tidal waters and the bottoms thereof; and proceedings may be brought in the Parish where the offense occurs or at the home port of any vessel. * * *

* * *

Sec. 18. This Act is primarily deemed to be in compliance with the direction of the Constitution of 1921, Article VI, Section 1, as amended by Act 328 of the Legislature of 1944, approved November 7, 1944, directing the Legislature to enact laws to protect and conserve the natural resources of this State and to prohibit and prevent the waste or wasteful use thereof; to the end that the food supply shall not be de-

pleted by negligence or intent; and to protect this valuable property of all the people * * *

2. LOUISIANA LEGISLATIVE ACTS RELATING TO OIL, GAS AND MINERALS

Act 196 of 1910

AN ACT

"To create a Conservation Fund by levying, collecting and enforcing payment of an annual license tax upon all persons, associations of persons, or business firms and corporations, pursuing the business of severing timber and minerals from the soil; and prescribing the mode and method in which said persons subject to license tax shall make report of their business."

* * *

Act 254 of 1910

AN ACT

"To establish a department of mining and minerals, including oil and gas production, to provide for its proper administration, to provide for the service of a Supervisor of Minerals and assistants; and fixing their duties and salaries; authorizing the prohibition of unsafe and wasteful mining, and providing penalties.

Section 1. Be it enacted by the General Assembly of the State of Louisiana, That there be and is hereby established a Department of Mining and Minerals, including gas and oil, to consist of the Register of the State Land Office, who shall be Ex-Officio Supervisor of Minerals, and one Deputy Supervisor of Minerals, who shall be a person having a practical know-

ledge of geology, and natural gas, and oil, and who shall be appointed and commissioned by the Governor, on the recommendation of the Conservation Commission, for the period of one year at a time;" * * *

Section 2. Be it further enacted, etc., That the Supervisor of Minerals shall make inspection, either in person or through the Deputy Supervisor, of all mining operations carried on in this State, particularly that of the production of natural gas and oil, so far as practicable, and shall see that every precaution is taken to insure the health and safety of workmen engaged in mining. He shall see that all the provisions of law pertaining to mining now in force, or hereafter enacted, particularly those provisions pertaining to the drilling of wells and piping and consumption of natural gas and oil, are faithfully carried out, and that the penalties of law are strictly enforced against any person or persons who violates the same." * * *

* * *

Act 258 of 1912

AN ACT

"Be it resolved by the House of Representatives of the State of Louisiana, the Senate concurring:

That the Governor of the State of Louisiana be and is hereby authorized to lease any vacant and unappropriated public lands belonging to the State of Louisiana, for the development and production of oil, gas, coal, salt, sulphur, lignite, and any other

minerals, under the terms and provisions hereinafter set forth."

Act 271 of 1914

AN ACT

"Authorizing the Governor to lease the vacant and unappropriated public lands and lake beds or bottoms belonging to the State, and providing the terms and conditions for such leases.

Sec. 1. Be it enacted, by the General Assembly of the State of Louisiana, that the Governor be and he is hereby authorized to lease any vacant and unappropriated public lands and lake beds or bottoms belonging to the State of Louisiana, for the development and production of oil, gas, coal, salt, sulphur, lignite, and any other minerals, under the terms and provisions hereinafter set forth."

* * *

Act 30 of 1915

AN ACT

"Authorizing the Governor to lease lands, including lake and river beds and other bottoms, belonging to the State, and providing the terms and conditions of such leases.

Sec. 1. Be it enacted by the General Assembly of the State of Louisiana, that the Governor be and is hereby authorized to lease any lands, including lake and river beds and other bottoms, belonging to the State of Louisiana, for the development and production of oil, coal, gas, salt, sulphur, lignite and

other minerals, under the terms and conditions hereinafter set forth."

* * *

Act 10 of 1916

AN ACT

"To amend and re-enact Act No. 209 of the Act of the General Assembly of 1912, entitled: 'An act to carry into effect Article 229 of the Constitution of 1898, as amended at the election in November, 1910, by levying an annual license tax upon all persons, firms, corporations or associations of persons engaged in the business of severing natural products, including all forms of timber, turpentine and minerals, including oil, gas, sulphur and salt, from the soil; * * *

Sec. 1. Be it enacted by the General Assembly of the State of Louisiana, that there is hereby levied an annual license tax for the year 1916, and for each subsequent year, upon each person, or association of persons, firms or corporation pursuing the business of severing natural products, including all forms of timber, turpentine and minerals, including oil, gas, sulphur and salt, from the soil."

Act 268 of 1918

AN ACT

"Defining waste and making the waste or undue use of natural gas in a misdemeanor, empowering the Department of Conservation with authority to prevent the use of natural gas in a manner calculated to threaten the common reservoir of natural gas with premature exhaustion, charging

the said Department with the duty to regulate the method of taking natural gas from any well and the use of natural gas;" * * *

Act 20 of 1918—Extra Session

AN ACT

"To carry into effect Article 229 of the Constitution of 1898, as amended at the election in November, 1910, by levying an annual license tax upon all persons, firms, corporations or associaitons of persons engaged in the business of severing natural products from the soil, as timber, turpentine, and minerals, including oil, gas, sulphur, and salt; and prescribing the method of collecting the license; requiring all those engaged in the severance of, and dealing in, such products to make reports of their business; to provide for the distribution of funds arising from this act; * * *

Sec. 9. Be it further enacted, etc., That one-sixth (1/6) of all of the licenses herein collected from the severance of oil and gas shall be accredited to the Department of Conservation, but this amount shall be in excess of the amount of otherwise appropriated to the Department of Conservation as its general fund, the said amount or so much thereof as may be necessary to be especially dedicated to the policing, protection, and investigation of the oil and gas resources of the state, and to further carry into effect the acts of the legislature for the better protection of the oil and gas resources of the state, and

the expense incident to the supervision of the collection of the license levied by this act.

Sec. 10. Be it further enacted, etc., That one-fourth (¼) of all other licenses collected under this act shall be accredited to the Current School Fund for the support of the public schools; * * *"

* * *

Act 250 of 1920

AN ACT

"Granting to the Department of Conservation, created by laws of Louisiana, greater power and authority in the work of conserving the crude petroleum, natural gas and mineral substances mined or produced in the State of Louisiana, giving to the Department of Conservation power and authority to adopt and promulgate, amend and re-adopt, rules and regulations for the drilling, development, sinking, deepening and abandonment of natural gas and oil wells, and to promulgate rules and regulations for the opening and operation of all mines in the State of Louisiana; * * *"

* * *

Act 252 of 1924

AN ACT

"To conserve the natural gas resources of the State of Louisiana; to define the conditions under which natural gas can be burned into carbon black; to establish rules and regulations for the drilling for and the production of gas; to provide for the spacing of gas wells and to limit

the percentage of the open flow capacity of gas wells that may be taken from such wells and to fix the maximum percentage that may be taken from them; to give the Commissioner of Conservation of this State authority to make rules and regulations for the conservation of the natural gas resources of the state; * * *"

Act 253 of 1924

AN ACT

"To further conserve the oil natural resources of the State of Louisiana."

Sec. 1. Be it enacted by the Legislature of Louisiana, That

(1) The Department of Conservation shall have the right, when quick action is required, to secure arrests, or injunctions against violators of the conservation laws relating to minerals without the sanction of the Attorney General of the State.

(2) The Department of Conservation shall have the power to devise and enforce rules for the spacing of oil wells in any area of the State to suit the needs of each particular locality.

* * *

(3) The Department of Conservation will from time to time prescribe rules, regulations, and requirements for the conservation of crude oil, or petroleum."

* * *

Act 131 of 1934

AN ACT

"To carry into effect Sections 1 and 2 of Article VI of the Constitution of Louisiana, and the pro-

visions of Act 45 of 1930 relating to the mineral resources of Louisiana; to authorize and direct the Commissioner of Conservation to inaugurate a geological survey of the State of Louisiana; to authorize and direct the Commissioner of Conservation to cooperate with the Board of Engineers for the State of Louisiana and the United States Geological Survey to assist in making topographical quadrangles, with contours, of the State of Louisiana; to impose a special fee for drilling wells for oil, natural gas, sulphur, or other minerals, in order to raise revenue for the purpose of carrying out the provisions of this Act; and to repeal any and all laws in conflict herewith."

* * *

Act 93 of 1936

An ACT

"Relative to leasing of lands, including rights of way, road beds, lake and river beds and other bottoms, belonging to the State or the title to which is in the public for mineral development; creating the State Mineral Board and providing for its authority in respect to such leases, providing the terms and conditions of such leases, providing for the disposition of the funds realized from such leases, and making an appropriation to carry this Act into effect.

Sec. 1. Be it enacted by the Legislature of Louisiana, That there is hereby created the State Mineral Board, to be composed of the Governor (who shall ex-officio be chairman) and four members to be appointed by the Governor. * * *

Sec. 4. The Board is hereby vested with full au-

thority to lease any lands belonging to the State or the title to which is in the public, including rights of way, road-beds, lake and river beds and other bottoms, lands adjudicated to the State at tax sale, and any other lands and water bottoms by whatever title acquired, for the development thereof for and the production therefrom of oil, gas, coal, salt, sulphur, lignite and other minerals, under the terms and conditions hereinafter set forth."

* * *

Act 225 of 1936

AN ACT

"To conserve the oil, gas and sulphur resources of the State of Louisiana; to prevent waste and depletion thereof; to prevent production in excess of the reasonable market demand; defining the powers and duties of the Department of Conservation; authorizing the Commissioner of Conservation to prescribe rules, regulations and orders, and to conduct hearings for the enforcement of this Act; and providing penalties for violations hereof; and to repeal all laws or parts of laws in conflict herewith."

Act 80 of 1938

AN ACT

"To amend the title and Sections 4, 5, 7, and 20 of Act 93 of 1936, entitled an Act relative to leasing of lands, including rights of way, road beds, lake and river beds and other bottoms, belonging to the State or the title to which is in the public for mineral development; creating the State Mineral Board and providing the terms and conditions of

such leases, providing for the disposition of the funds realized from such leases * * *

* * *

Sec. 4 The State Mineral Board is hereby vested with full authority to lease any lands heretofore granted by the State and now belonging to any of the various levee districts throughout the State, and any lands belonging to the State, or the title to which is in the public, including rights of way, road-beds, lake and river beds and other bottoms, lands adjudicated to the State at tax sale, and any other lands and water bottoms by whatever title acquired, for the development thereof for and the production therefrom of oil, gas, coal, salt, sulphur, lignite and other minerals * * *"

* * *

Act 77 of 1940

AN ACT

"Relative to the conduct of geophysical and geological surveys; requiring permits for the conduct of such surveys; authorizing the Commissioner of Conservation to issue such permits under certain conditions; authorizing the State Mineral Board to adopt and promulgate certain rules, regulations and orders relative to the administration of this Act; * * *"

* * *

Act 311 of 1940

AN ACT

"To authorize and provide for the exploration and

development of public lands belonging to the State of Louisiana for the mining, drilling, production, processing, transportation and sale of oil, gas, coal, salt, sulphur, lignite and other minerals; to provide for the mineral exploration and development of such public lands by the State of Louisiana itself; to authorize the State Mineral Board to determine the advisability of and conditions under which such exploration and development shall be undertaken by the State itself; * * *

Sec. 1. Be it enacted by the Legislature of Louisiana, That the State Mineral Board, or its successor, is hereby authorized and empowered to explore for and to develop the mineral resources of any vacant and unappropriated lands belonging to the State of Louisiana, title to which is in the public, including rights of way, road beds, lake and river beds and other bottoms, land adjudicated to the State at tax sale and any other lands and water bottoms whatsoever by whatever title acquired, for the exploration and development thereof and the production therefrom of oil, gas, coal, salt, sulphur, lignite, and any other minerals, wherever in the opinion of the State Mineral Board such exploration and development by and for the account of the State is to the best interest of the State."

* * *

Act 153 of 1942

AN ACT

"To amend and re-enact Section 9 of Act 93 of 1936, as amended, entitled 'An Act relative to leasing

of lands, including lands belonging to levee boards, rights of way, road beds, lake and river beds and other bottoms, belonging to the State or the title to which is in the public for mineral development; creating the State Mineral Board and providing for its authority in respect to such leases, providing the terms and conditions of such leases, providing for the disposition of the funds realized from such leases, and making an appropriation to carry out the terms of this Act', and to repeal conflicting laws. * * *

Sec. 9. The board shall have full supervision of all mineral leases granted by the state, now in effect or hereafter entered into, in order that it may determine that the terms of any such leases are fully complied with, and generally shall have authority to take any lawful action for the protection of the interests of the state." * * *

Sec. 9. The board shall have full supervision of all mineral leases granted by the state, now in effect or hereafter entered into, in order that it may determine that the terms of any such leases are fully complied with, and generally shall authority to take any lawful action for the protection of the interests of the state." * * *

* * * * * * * * *

3. LOUISIANA CONSTITUTION

Article 6, Section 1 Of The Constitution of Louisiana

"Sec. 1. The natural resources of the State shall be protected, conserved and replenished.

(A) *Wild life and fisheries commission; director.*

For that purpose, the wild life of the state, including wild game and non-game quadrupeds or animals, game, oysters, fish and other aquatic life, are hereby placed under the Louisiana Wild Life and Fisheries Commission. The Louisiana Wild Life and Fisheries Commission shall be managed, controlled, supervised and directed by the commissioner."

* * * * * * * * *

Article 6, Section 1 (A-1) of the Constitution Of Louisiana.

"(A-1) The District Courts in and for all parishes bordering upon the Gulf of Mexico or its arms or inlets shall have concurrent jurisdiction to enforce all statutes and regulations enacted or passed for the protection, preservation and propagation of wild life or salt water fish, shrimp, oysters or other salt water aquatic life in all cases arising from the violation of any such statute or regulation on, in and under the Gulf of Mexico within the territorial jurisdiction of the State of Louisiana; Provided that in case of the illegal operation of a vessel registered at a port in any one of said parishes the said vessel and all persons subject to prosecution in connection with such illegal operations shall be proceeded against in the District Court of the parish where such vessel is registered. * * *"

4. OTHER STATUTES ASSERTING LOUISIANA JURISDICTION IN THE GULF OF MEXICO

In the Legislative history of the Submerged Lands Act the Congressional Committees recommending ap-

proval of the Acts called attention to the fact that "at the request of the Executive Departments of the Federal Government, the States have deeded to the United States portions of their submerged lands lying outside the inland waters; and that "the States, during more than a Century, have been exercising the highest rights of ownership by conveying to the United States a part of the submerged lands within their boundaries." (House Report No. 215, 83rd Congress, 1st Sess., pages 42 and 43). Some of the Acts of the Louisiana Legislature relating to the subject are digested hereinbelow.

"Act No. 117 of 1855

AN ACT

Authorizing the Executive to relinquish to the United States, in certain cases, title to and jurisdiction over lands for sites of Lighthouses, etc., on the coast and waters of Louisiana.

Whereas, the Congress of the United States has made appropriations for the construction of certain lighthouses, not yet built, on the coast and waters of this State, and the wants of commerce may hereafter call for the construction of others; and whereas, the laws of the United States require that said United States should hold exclusive title to and jurisdiction over all lands to be occupied as sites of public works, before any such work can be begun. Therefore:

Section 1. Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened, That whenever a tract of land,

containing not more than twenty acres, shall be selected by an authorized officer or agent of the United States, for the bona fide purpose of erecting thereon a lighthouse, beacon, or other public work, and the title to the said land shall be held by the State, then, on application of the said officer or agent to the Governor of the State, the said Executive is hereby authorized to transfer to the United States the title to and jurisdiction over said land;"

Louisiana Revised Statutes of 1870

Sec. 2948. "Whenever a tract of land, containing not more than twenty acres, shall be selected by an authorized officer or agent of the United States, for the bona fide purpose of erecting thereon a lighthouse, beacon, or other public work, and the title to the said land shall be held by the State, then, on appplication of the said officer or agent to the Governor of the State, the said executive is hereby authorized to transfer to the United States the title to and jurisdiction over said land; Provided, That if the said lighthouse should not be built within five years from the date of the transfer, the jurisdiction over the same and the title of the land if it had been transferred by the Governor, shall revert to the State."

Act 13 of 1871

AN ACT

Giving the consent of the Legislature of the State of Louisiana to the purchase by the United States of land within this State for public purposes.

Sec. 1 Be it enacted by the Senate and House of Representatives of the State of Louisiana, in General Assembly convened, That the consent of the General Assembly of the State of Louisiana be and the same is hereby given to the purchase by the Government of the United States, or under the authority of the same, of any tract, piece or parcel of land from any individual or individuals, bodies politic or corporate, within the boundaries or limits of the State, for the purpose of erecting therein lighthouses and other needful public buildings whatever, * * the consent, herein and hereby given, being in accordance with the seventeenth clause of the eighth section of the first article of the Constitution of the United States, and with the acts of Congress in such cases made and provided.

Act 11 of 1921

AN ACT

To authorize and direct the Governor to withdraw from sale or entry any of the vacant and unappropriated public lands belonging to the State of Louisiana, now existing or hereinafter acquired by accretion or otherwise, that may be required to maintain, for the benefit of the State of Louisiana, the navigability of the channels of and at the mouth of the Mississippi River.

Whereas the United States Government through its War Department, Chief of Engineers, has requested the cooperation of the State of Louisiana in maintaining the navigability of the channels of and at the mouth of the Mississippi River, and

Whereas, the commercial prosperity of the State

of Louisiana, of the Mississippi Valley, and of the Nation is dependent upon the maintenance of these channels; and it is necessary that certain of the State's lands be retained in public ownership for said purpose.

Sec. 1 Be it enacted by the Legislature of Louisiana that the Governor of the State of Louisiana be and he is hereby authorized and directed to withdraw from sale or entry any of the vacant and unappropriated public lands belonging to the State of Louisiana, now existing or hereafter acquired by accretion or otherwise, located south of the following lines and described and bounded as follows to-wit:

All of that area bounded on east by the axis of the Mississippi River to the Head of the Passes at the mouth of the Mississippi River bounded on the Northwest by a line, commencing at Cubits Gap Light house and running south thirty-five degrees (35°) west (true bearing) through Cubits Gap Light house, latitude 29° 11′ 36.70″ north, longitude 89° 15′ 53.75″ west; bounded on the northeast by a line beginning on and at the axis of the Mississippi River at a point, north of the head of the Passes of the Mississippi River, and at the juncture of the channels of the Mississippi River and Pass A L'Outre, and running along and through the channel of Pass A L'Outre, along and through the channel of the North Pass, north of Pass A L'Outre Light house to deep water in the Gulf of Mexico; and

bounded on the south by deep water in the Gulf of Mexico * * *"

Act 52 of 1921

"AN ACT

For the creating of a Game and Fish Preserve and Public Hunting Grounds by the setting apart of certain state lands; to provide for the control of same, for the protection of fur bearing animals, game and fish thereon; and to provide for punishment of violations of this Act.

Sec. 1. Be it enacted by the Legislature of Louisiana That all of the vacant and unappropriated public lands belonging to the State of Louisiana, now existing or hereafter acquired by accretion or otherwise, and more particularly described as follows:

All swamps and marsh lands in Township 22 South, Range 32 East, Southeastern District of Louisana, West of the Mississippi River * * *

All swamps and marsh lands in Township 23 South, Range 33 east, Southeastern District of Louisiana, West of the Mississippi River * * *

All swamps and marsh lands in Township 23 South, Range 34 East, Southeastern District of Louisiana, west of the Mississippi River.

All swamps and marsh lands in Township 24 South, Range 32 East, Southeastern District of Louisiana, West of the Mississippi River * * *

All swamps and marsh lands in Township 24 South, Range 33 East, Southeastern District of Loui-

siana, West of the Mississippi River * * *

Sec. 2. The Department of Conservation of the State of Louisiana shall have absolute control and full authority concerning the use of said lands and shall adopt rules and regulations controlling said area.

Sec. 3. It shall be unlawful to trap, hunt or fish on said preserve except under such rules and regulations as may be made by the Department of Conservation of the State of Louisiana."

Act 329 of 1948

"AN ACT

To enable the State of Louisiana to enter into a compact with other states for the purpose of promotion and better utilization of the fisheries of the Gulf of Mexico to be known as the Gulf States Marine Fisheries Compact; to provide, for representatives to the commission created thereby, and to provide an appropriation therefor.

Section 1. Be it enacted by the legislature of Louisiana, that the Governor of this state is hereby authorized and directed to execute a compact on behalf of the State of Louisiana with any one or more of the States of Florida, Mississippi, Alabama and Texas, and with such other states as may enter into the compact legally therein in the form substantially as follows:

GULF STATES MARINE FISHERIES COMPACT

The contracting states solemnly agree:

Article I.

Whereas the Gulf Coast states have the proprietary interest in and jurisdiction over fisheries in the waters within their respective boundaries, it is the purpose of this compact to promote the better utilization of the fisheries—marine, shell and anadromous—of the seaboard of the Gulf of Mexico, by the development of a joint program for the promotion and protection of such fisheries and the prevention of the physical waste of the fisheries from any cause.

Article II.

This compact shall become operative immediately as to those states ratifying it whenever any two or more of the States of Florida, Alabama, Mississippi, Louisiana and Texas have ratified it and the Congress has given its consent subject to Article 1, Section 10, of the Constitution of the United States . . . "

This compact was ratified and enacted into law by the respective legislatures of the States of Florida, Alabama, Mississippi, Louisiana, and Texas, (Fla.; Laws 1947, p. 17; Miss.; Laws 1950, c. 556; La. Acts 1948, No. 329; Tex.; 1949, ch. 554), and Congress assented thereto (Public Law 66, 81st Congress).

The foregoing excerpts from various Acts of the Legislature demonstrate the fact that Louisiana has asserted jurisdiction and ownership over the waters,

the bed and the resources of the Gulf of Mexico for a long period of time. This jurisdiction and ownership has extended far out on the Continental Shelf to an extent which, in International Law, gives to Louisiana a title to the sea-bed, sub-soil and resources therein. Facts to establish the extent of Louisiana's claim and ownership can be presented by the testimony of witnesses and by official State records.

Respectfully submitted,

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I, _____ one of the attorneys for the State of Louisiana, defendant herein, and a member of the Bar of the Supreme Court of the United States, certify that on the _____ day of _____, 1957, I served copies of the foregoing Appendix to Brief on Behalf of the State of Louisiana by leaving copies thereof at the offices of the Attorney General and of the Solicitor General of the United States, respectively, in the Department of Justice Building, Washington, D. C.

_____

OF COUNSEL

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NO. 11 ORIGINAL

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

UNITED STATES OF AMERICA, PLAINTIFF
V.
STATE OF LOUISIANA, DEFENDANT

MOTION FOR RECONSIDERATION OF ORDER DENYING RIGHT OF INTERVENTION, AND SUPPORTING BRIEF IN ANSWER TO U. S. BRIEF FOR JUDGMENT

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NO. 11 ORIGINAL

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UNITED STATES OF AMERICA, PLAINTIFF

V.

STATE OF LOUISIANA, DEFENDANT

MOTION FOR RECONSIDERATION OF ORDER DENYING RIGHT OF INTERVENTION, AND SUPPORTING BRIEF IN ANSWER TO U. S. BRIEF FOR JUDGMENT

Motion To Reconsider Order Denying Right Of Intervention

The Parishes of St. Bernard, Plaquemines, Jefferson, Iberia and St. Mary, Applicants for intervention, move the Court to re-consider its order of March 25, 1957 denying them their legal right to intervene as defendants herein. Said order of denial is contrary to the law and facts, as shown by Applicants' original motion and supporting brief for intervention.

Applicants showed that they have a legal property right and interest in funds for distribution and in

property subject to disposal by judgment and orders of Court in this action, in which they would be adversely affected; and that their interests would be inadequately represented and they may be bound by a judgment in this case.

New Rule 9 (2) of this Court adopts the applicable Federal Rules of Civil Procedure, Title 28, U. S. Code, enacted by Congress, in original actions in this Court.

Title 28, Rule 24 (a), (2) and (3) clearly provide for "Intervention of Right", under all the facts above shown.

In its order of denial the Court overlooked citations of authorities submitted by interveners showing that it long has been settled by this Court that claims to property or funds under control of the Court may be dealt with as ancillary to the suit in which control is exercised—and this although independent suits to enforce the claim could not be entertained in this Court; and also that when the jurisdictional requirements are satisfied, as in this case, individual parties whose presence is necessary or proper for determination of the case between the States (and United States) are properly made parties defendant.

The damage and injury which may be caused Interveners by said order of denial can still be avoided by this Court recalling said order and permitting Interveners their right under the law to their day in Court,—instead of denying them an opportunity of due process of law before judgment is rendered by which they may be bound as to their legal rights, property and funds subject to said judgment.

This Court assigned no reason for its order of denial of applicants' legal right of intervention.

The Court's denial can only be construed as relieving applicants for intervention of any obligation to be bound by any judgment or orders in this case which may affect their property rights and their constitutional right of property taxation and local self-government within their jurisdiction, co-extensive with that of the gulfward boundary of the State, 3 leagues from the coast line in the Gulf of Mexico.

To construe otherwise would be to deny applicants of their property rights without due process of law, in violation of the Fifth Amendment to the U. S. Constitution.

U. S. Brief Contends Political Statement Re 3-Mile Belt Supercedes Acts Of Congress

It is plain from the position taken for the United States in their brief in support of motion for judgment, that it is their purpose to disregard the applicable provisions of the Constitution and Laws of the United States, and to use certain unfounded "political statements" to secure judicial sanction for their taking of the submerged lands and resources of the State of Louisiana, within its historic boundary, 3 leagues from the coast line in the Gulf of Mexico, in which Interveners have legal and property rights, in an effort to circumvent the plain provisions of the Submerged Lands Act of Congress.

The claim for the United States is that the alleged traditional 3-mile from shore belt national policy,

(based upon erroneous statements and claims), restricts the seaward limits of the State to three miles from shore, regardless of the State limits fixed by Congress in the Act of its Admission into the Union on April 8, 1812 at 3 leagues from coast in the Gulf of Mexico, and regardless of the acknowledgment of ownership and quitclaim to the State in the Submerged Lands Act within 3 leagues from coast in the Gulf of Mexico.

Their position is summarized in a letter written to the Attorney General by Secretary of State John Foster Dulles, dated June 15, 1956 (APPENDIX B, pp 176-180), which attempts to support a traditional 3-mile limit national policy, and which the brief says the Court must adopt as controlling in this case. (U. S. Br. pp 59-60, 70-71).

Let us analyze Mr. Dulles' letter:

Claim For 3-Mile Belt National Policy Based On Jefferson Letter, 1793

First, the Secretary's letter states that the United States was the first nation to adopt the concept of the old cannon ball range into a specific distance fixed at 3 miles, in a note to the French Government on November 8, 1793, by Thomas Jefferson as Secretary of State.

A reading of the quoted portion of said letter will disclose that what Jefferson actually wrote was, (1) The greatest distance asserted among nations was upwards of 20 miles; (2) the smallest distance claimed by any nation, "is the outmost range of a cannon ball, usu-

ally stated at one league"; (3) that 3 sea leagues has some authority in its favor; (4) the character of our coast would entitle us, "to as broad a margin of protected navigation," as any nation; (5) not proposing, however, at this time to fix the distance to which we may ultimately insist upon the right of protection; and (6) the President gives instructions for the present to the distance of one sea league, or 3 miles from shore.

Jefferson Repudiated 1793 Letter Established Fixed Limit, And Claimed To Gulf Stream

But Secretary Dulles' letter fails to state that the record shows that in 1806 Thomas Jefferson as President repudiated the above declaration as establishing a fixed limit, and he claimed that the limit of neutrality should extend "to the gulf stream which was a natural boundary (!) and within which we ought not to suffer any hostility to be committed." THE SOVEREIGNTY OF THE SEA by Thomas W. Fulton, 1911, p. 575.

Madison Claimed To Gulf Stream

Further, although the Secretary of State's letter quotes Secretary of State Madison, in 1807, to the effect that there could be no pretext for allowing less to the nation than a marine league from the shore, his letter is silent on Madison's historic letter to Messrs. Monroe and Pinkney, Ministers to London, on May 17, 1806, as follows:

> "In defining the distance protected against belligerent proceedings, it would not, perhaps, be unreasonable, considering the extent of the United States, the shoalness of their coast, and the natural indication furnished by the well defined path

of the Gulf stream, to expect an immunity for the space **between that limit and the American shore."**

Again his letter does not point out that evidently President Jefferson and Secretary Madison saw to it that their statements regarding the natural Gulf stream limits were adopted by Congress.

1807 Act Of Congress Ratified Gulf Stream Claim

On February 10, 1807, President Thomas Jefferson signed an Act of Congress which authorized the President to cause a survey to be taken of the coasts of the United States, "within 20 leagues of any part of the shores of the United States," and beyond "to the Gulf stream," as in his opinion may be especially subservient to the commercial interests of the United States. Laws of the U. S. A. Vol. 4, 1789-1815, pp. 79-80.

Now, those are the facts of record with relation to the Statements by Jefferson and Madison which are still being misused and abused as a basis for a claim of a traditional 3-mile belt from shore for the United States.

Further, Secretary Dulles' letter attributes to Secretary of State Seward, a position supposedly illustrating his observance of the 3-mile belt principle.

Secretary Seward Negotiated Alaska Treaty 10 Leagues From Coast (Not 3 Miles)

To the contrary, however, it was Secretary Seward who negotiated the Treaty with Russia for the purchase of the Alaska Territory on June 20, 1867, 15 Stat. 539, which fixed the Alaska Territory maritime boundary out to "10 marine leagues from coast".

Does this look like Secretary Seward advocated the 3-mile belt?

The letter referred to by Secretary Seward to the Spanish Minister in 1862 involved a diplomatic exchange between Britain and Spain over Spain's 6 miles maritime claim.

As a matter of fact at that time Great Britain exercised maritime jurisdiction under Acts of Parliament at various distances from 2 leagues to 100 leagues.

Spain adhered to its 6 miles claim.

Masterson, pp 256 and 288-289.

No Treaty Ever Fixed 3-Mile Belt

It is admitted that there have been numberless diplomatic exchanges, conventions, commercial treaties and the like, but none of these ever fixed the territorial limits of the United States at 3 miles from shore.

Those diplomatic exchanges were merely expressions of "firm intention to uphold the principle that 3 marine miles constitute the proper limits of territorial waters".

Masterson, pp 346, 352, 395, Foot-note 54.

In view of all these inaccuracies in the Secretary of State's letter to the Attorney General, how can the Court consider it as evidence of anything relating to maritime boundaries?

In **Church v. Hubbart**, 2 Cranch 187, 234, regarding the claim that the maritime boundary extended

only to the cannon short, or 3-mile belt, this Court said:

> "Indeed the right given to our own revenue cutters, to visit vessels four leagues from our coast, is a declaration that in the opinion of the American Government, **no such** principle as that contended for has a real existence".

And, in **U. S. v. Bevans**, 1818, 3 Wheat 336, 385, this Court held:

> "What, then, is the extent of jurisdiction which a State possesses
>
> "We answer, without hesitation, **the jurisdiction of a State is co-extensive with its territory; co-extensive with its legislative power.**"

Congress Fixed 4 Leagues, And Other Distances Further Seaward

Although the entire basis of the United States claim, to Louisiana's submerged lands and resources in the so-called disputed area lying between 3 miles from shore and 3 leagues from the Coastline in the Gulf of Mexico, is their groundless so-called traditional national policy of the 3-mile belt from shore, which is disproved above, the record shows that Congress has asserted its legislative powers beyond 3 miles from shore consistently.

From 1790 to date, as found in Revised Statutes 2867 and 2863, Congress fixed jurisdiction for search and seizure of vessels at 4 leagues.

The U. S. Senate ratified the Alaska Purchase Treaty with Russia in 1867, fixing its outermost limits at 10 marine leagues from coast.

The Submerged Lands Act of 1953, 67 Stat. 29, Sec. 2 (b) and (c) and Sec. 3, quitclaimed all right to the submerged lands and natural resources to Gulf Coastal States at a mixiumum of 3 leagues from the coast line, if such was its boundary at the time the State was admitted into the Union, as in the case of Louisiana, 2 Stat. 701.

And, Congress also asserted its legislative jurisdiction to the outer edge of the Continental Shelf by an Act "To provide for the **jurisdiction** of the United States over the submerged lands of the Outer Continental Shelf", etc., 67 Stat. 462.

La. Territory Extended Generally To Continental Shelf

Contrary to the contention made in the U. S. Brief, p. 127, that the Louisiana Territory acquired from France was bounded by the shore, and, consequently, Louisiana could not have been given a greater extent, is the statement by Thos. Jefferson, "The ancient boundary of Louisiana" extended westwardly to the Rio Norte or Bravo, and eastwardly to the Rio Perdido, between Mobile and Pensacola. See THE LOUISIANA PURCHASE by Binger Herman, Commissioner of the General Land Office, 1900, p. 77, for letter by Thomas Jefferson to Mr. Breckenridge, August 12, 1803.

This Court likewise held that,

> "Under the treaty of cession of Louisiana made with France, April 30, 1803, the United States always claimed **to the Perdido River** on the east. 11 Stat. at L. 761. President Madison's proclamation in 1810 directed that possession should be taken of said territory East of the Mississippi

and Iberville Rivers to the Perdido." **United States vs. Lyndes Heirs**, 1871, 11 Wall. 632.

The extent of the Louisiana Territorial Waters in the Gulf are shown by dotted lines on maps made by N. de Fer, official French Geographer in 1701 and 1705, and particularly identified by legends with de la Salle's discovery of the Louisiana Territory.

We attach a "Map Showing The Continental Shelf", marked "EXHIBIT 16". The dotted area shown east of the United States is the Continental Shelf. The heavy line shown in the Gulf of Mexico is superimposed according to scale to show the Louisiana Territory coastline, according to the official French Geographer's 1701 and 1705 Maps. There is also superimposed according to scale the 20 league line in relation to the Outer Continental Shelf in the Atlantic Ocean. From this the Court may see that the old mariners who did hand-sounding from their sailing vessels knew fairly well where the Continental Shelf lay, why the Continental Congress demanded that the 20 league line be written in the Treaty with the British Crown in 1783, and also why President Jefferson and Secretary Madison in 1806 officially stated that our Nation's boundary should extend to the Gulf stream, which they said was a natural boundary.

No Basis For So-Called "Traditional 3-Mile Belt National Policy"

We submit that the facts shown from the official historic records, as above, absolutely refute any basis for a so-called traditional national policy establishing either a 3-mile from shore belt, boundary, or jurisdiction in any sense of the word.

The fact should be noted, too, that the same contentions now made for the United States by the Attorney General and the Secretary of State were urged before the Senate Interior Committee during Hearings on the Submerged Lands Act in March, 1953, passed by Congress and signed by the President in May, 1953.

Attorney General And State Department Made Same 3-Mile From Shore Recommendation To Congress—But Congress Rejected It

Both the Attorney General and Secretary urged the so-called traditional 3-mile from shore belt policy of the United States, and hinted broadly, as the Secretary now does in his letter to the Attorney General, that dire results would follow to the welfare and defense of the nation if their recommendations were not accepted. But they were rejected by Congress, because the Submerged Lands Act enacted by Congress adopted as a base line, the coast line or outer boundary of inland waters, not the shore line still contended for in the U. S. brief.

The Senate Interior Committee and the Congress knew full well the meaning of "the coast line".

In the Hearings before the Committee in October, 1949, the method of designating and defining the coast line by the federal government, under applicable Acts of Congress, was thoroughly discussed with the Committee. See pp 194, 195 of said Hearings.

"Coastline" Distinguished From "Shoreline"

The Senate Committee also went into detailed examination of the difference between "shore line" and "the coast line" in its Hearings in March, 1953.

While Attorney General Brownell was testifying, he was questioned at length on this subject, as follows:

@ p. 931:

"Attorney General Brownell. The traditional 3-mile limit would be an accurate description.

"Senator Anderson. It is very important that we know **out from what.** Out from **the coastline or the shoreline?** The Holland bill says the coast."

@ p. 932:

"Attorney General Brownell. The general description **we would use is the shoreline.**

"Senator Anderson. Shoreline. **You recognize that that is completely different from the language in the Holland bill** and the Daniel bill?

"Attorney General Brownell. I believe **you are correct** in that statement."

@ p. 933:

"Senator Anderson. I could not agree with you more, General Brownell, and I think if somebody came in with a line drawn that **3 miles from the shore, it might be one thing;** but **3 miles from the coast,** if the coast is nebulous and **reaches out to the farthermost edge of the farthermost reef,** it is quite a problem as to where it is going to be.

"Attorney General Brownell. **I agree with that.**"

@ p. 939:

"Senator Long. There has been some **question raised** with regard to **whether** you should **use a shoreline definition** or a **coastline definition.** * * *

You would have a boundary between inland waters and the marginal belt; and, based upon that, if there were to be a 3-mile limit, it would have to measure forward from **the boundary of inland waters, which is the distinction which is made between the word 'coast' and the word 'shoreline.' The word 'coast' means to measure from the boundary line of inland waters, while the word 'shoreline' means to measure from the shore itself.**

"I would point out to you that, **with regard to the State of Louisiana,** the Enabling Act that brought the State in refers to the southern **boundary as 'extending to the said gulf** to the place of beginning, including all island **within 3 leagues of the coast.'**

"Congress cannot very well apply a shoreline definition to Louisiana after it has already fixed its boundary as a coast line, can it?

"Attorney General Brownell. We would want to give that a little study, Senator, before we answered that particular point."

@ p. 947:

"Senator Kuchel.* * * **When you suggested the 'shoreline' be used as the basis for any congressional description, you would of course exclude from your use of the word 'shoreline' any inland waters along any coastal State involved.**

"Attorney General Brownell. **That is right.**"

"Senator Kuchel. The reason I ask that question is that the bill introduced by the Senator from Florida defines the term 'coastline' as meaning the line of ordinary low water along that portion of the coast which is in direct contact with the open sea, and is a line marking the seaward limit

of inland waters, which includes all estuaries, ports, harbors, bays, channels, straits, historic bays and sounds, and all other bodies of water which joins the open seas."* * *

@ p. 948:

"In either of those instances would you object if these bills failed to describe in metes and bounds the lands that the congress is concerning itself with and used language generally as the Holland bill does?

"Attorney General Brownell. We certainly could not object to that. **That is a matter of congressional policy.** We only make our suggestion for the purpose of certainty."

The State Department was represented by its Deputy Legal Adviser, Mr. Tate, in the same Hearings. He made the same broad and unfounded statements that the federal government's claim as to territorial waters always has been 3 miles from shore,— and he added, "This position has never been changed." pp 1052, 1053, 1056.

When asked if Congress recognized a coastal State's seaward boundary at more than 3 miles from shore, would that constitute a departure from established historic positions of the United States with respect to outer limits of territorial waters of the United States, and Mr. Tate answered, most positively (and most incorrectly), as follows:

@p. 1065:

"Mr. Tate. As I said before, it would be inconsistent with the traditional claim of the United States.

"Senator Jackson. The claims that this country has maintained ever since Thomas Jefferson was Secretary of State?

"Mr. Tate. That is right."

@ p. 1068: Mr. Tate testified that the United States claims the right of exploration and exploitation of the seabed and subsoil out to the extent of the Continent Shelf; and if Congress decides that exploitation should be done by the States, "then I would assume they (Congress) could transfer that right of exploitation to the States."

Mr. Tate repeated the same testimony @ p. 1070 in answer to a question by Senator Long.

@ p. 1073, in answer to a question by Senator Long, Mr. Tate further testified that the alleged statement by Mr. Jefferson (3 miles) could only be made on behalf of this nation vis-a-vis other nations. **"He would not have purported to have settled the question as between the federal government and the state governments,"**

He there recognized the principle held by this Court in the Cases of **U. S. vs. Texas** and **In re: Cooper**, above quoted.

But, the U. S. Brief attempts to use Secretary Dulles' letter to settle their claim of boundary against the State and says this Court is bound to follow it, regardless.

@ p. 1077, Mr. Tate further testified, there was no protest by any foreign nation against the Texas 3 league boundary.

There certainly has been none against Louisiana's 3 leagues boundary either since 1812, and under the International Court of Justice decision in **United Kingdom v. Norway**, the 3 leagues from coast Act of Congress settles that.

@ p. 1084, Senator Long asked whether, "the coast line definition would more accurately describe the marginal belt rather than a shore line definition, inasmuch as a shore line definition would have to go inside the bays.", and Mr. Tate answered, "To that extent, yes."

The above testimony elicited from the Attorney General and Legal Adviser of the State Department shows that they attempted to have the Congress adopt their version of the so-called 3-mile from shore traditional maritime belt, which Congress rejected.

Further, the misconstrued Jefferson 1793 letter, and other State Department letters to members of Congress, attempting to influence the Submerged Lands legislation were all considered by Congress. See Senate Interior Committee Hearings, 1953, pp. 318, 325, 322, 323, 462, 1062.

Section 2 of the Submerged Lands Act defining the term "boundaries", within which the submerged lands and resources were quitclaimed to the State, includes the boundaries in the Gulf of Mexico as they existed at the time such State became a member of the Union, or as heretofore approved by the Congress, extending from **the coast line** not more than **3 marine leagues into the Gulf of Mexico.**

And, Paragraph (c) of said Section 2 defines the term "coast line" as **the line** which is in direct contact with the open sea and **the line** marking the seaward limit of inland waters.

It should be noted that Congress used the term "coast line" and "**the line** marking the seward limit of inland waters." Congress could not have been more specific in rejecting the "shore line" as the baseline recommended by the Attorney General and State Department, when it defined "the coast line" as "**the line** marking the seaward limit of inland waters as the base line from which the 3 miles or 3 marine leagues should be measured from the coast line into the Gulf of Mexico.

As shown on pp. 14-17-18 of Interveners' Brief in support of motion herein previously filed, the 1807 Act of Congress authorized the President to cause a survey to be taken of the **coasts** of the United States within 20 leagues of any part of the shores and even to the Gulf stream; that the 1895 Act of Congress vested the authority in the Secretary of the Treasury to designate and define by suitable coast objects, "**the line** dividing the high seas from rivers, harbors and inland waters", while the 1807 Act was still in effect, making it lawful to designate said coast line within 20 leagues of the shores or even to the Gulf stream.

"Coastline" Not Fixed By Coast Guard For Navigation, But Fixed Originally Under 1806 Act Of Congress—Long Before Any Law Enacted Regarding Navigation

The U. S. Brief contends that the so-called "Coast Guard line" should be rejected as the base line from which to measure the State's seaward boundary, be-

cause they say this line only provided for Rules of Navigation, but did not form a part of the coast line of Louisiana.

The U. S. brief evidently fell into error through the belief that said coast line was originally drawn by the Coast Guard in recent years, because they say, p. 132, that the Commandant of the Coast Guard stated that, "These lines are not for the purpose of defining federal or state boundaries, nor do they define or describe federal or state jurisdiction over navigable waters."

As a matter of fact, the Commandant of the Coast Guard had no authority to judge as to the purpose of the coast lines, in face of the positive provision of the Act of Congress of 1895, 28 Stat. 672, which provided for the designation and defining of said coast line as "the line dividing the high seas from rivers, harbors and inland waters."

It appears unmistakably that the Louisiana coast line was designated and defined under an Act of Congress of April 21, 1806, 2 Stat. 394, authorizing the Secretary of the Treasury "to cause a survey to be made of the seacoast of the Territory of Orleans," long before Congress ever enacted "Navigation" laws to fix inland water rules, or to adopt the international rules of navigation on the high seas. 23 Stat. 438, Apr. 29, 1864, Amd. Aug. 19, 1890.

(This was 140 years before the Commandant of the Coast Guard was authorized by Congress under Sec. 101 of Reorganization Plan No. 3 of 1946, to designate and define the Coastline as the outer boundary of inland waters, as an amendment to the 1895 Act.)

And, on December 20, 1810, a resolution was adopted by Congress, directing the Secretary of the Treasury to report to the House on the survey of the coast of the Territory of Orleans, under authority of the Act of April 21, 1806. History of Congress, Dec. 10, 1810.

We find, too, that this Court in **Queyronze vs. United States,** 1865, 3 Wall 83, 93, had occasion to hold that Ship Shoal Light was laid down on the coast survey charts more than 100 miles west of the mouth of the Mississippi.

The same Ship Shoal Light is one of the coast objects presently marking the Louisiana coast line, as shown in the U. S. Coast Guard Pamphlet C. G. 169, March 1, 1955, PART 82. **Boundary Lines of Inland Waters.** (Please note the designation: **Boundary Lines of Inland Waters).**

Section 82. 1 states,

"The waters inshore of the lines described in this part are 'inland waters' * * *. The waters outside of the line described in this part are the high seas * * *.

Sections 82.95 and 82.103 of said PART 82 describe said lines as follows:

"82.95 MOBILE BAY, ALA., TO MISSISSIPPI PASSES, LA.—Starting from a point which is located 1 mile, 90° true, from Mobile Point Lighthouse, a line drawn to Mobile Entrance Lighted Whistle Buoy 1; thence to Ship Island Lighthouse; thence to Chandeleuer Lighthouse; thence in a curved line following the general trend of the sea-

ward, high-water shore lines of the Chandeleuer Islands to the southwestern-most extremity of Errol Shoal (Lat. 29°35.8' N., Long. 89°00.8' W.); thence to Pass a Loutre Lighted Whistle Buoy 4."

"82.103 MISSISSIPPI PASSES, LA., TO SABINE PASS, TEX.—A line drawn from Pass a Loutre Lighted Whistle Buoy 4 to South Pass Lighted Whistle Buoy 2; thence to Southwest Pass Entrance Mid-channel Lighted Whistle Buoy; **thence to Ship Shoal Lighthouse**; thence to Calcasieu Pass Lighted Whistle Buoy 1; thence to Sabine Pass Lighted Whistle Buoy 1."

There is no complication or difficulty in establishing the coast line, or **the line** marking the seaward limit of inland waters, as the base line adopted by Congress in the Submerged Lands Act from which to measure the State's seaward boundary within which Congress acknowledged and quitclaimed State ownership of submerged lands and natural resources.

La. "Coastline" already Established Under Acts Of Congress

The entire coast line of the State of Louisiana is drawn on U. S. Coast and Geodetic Survey Charts already established and defined as 1267, 1270 and 1272 to 1279, inclusive.

The matter becomes very simple if we adhere to the constitutional right of Congress to admit new States into the Union and fix their boundaries, if we construe the limits as described by Congress in the Act admitting Louisiana as a State into the Union on April 8, 1812, because the State's southern limit described in the Gulf, regardless of references to islands, was and is ,"3 leagues of the coast."

In view of the efforts made in the U. S. brief to change and restrict Louisiana's gulfward boundary to the unfounded so-called traditional 3 miles from shore belt, it may be well to refer to the historic background of Louisiana's admission as a State. By Act of 1804, all that portion of the Louisiana Territory ceded by France to the United States south of the 33° of North latitude was created into the Territory of Orleans.

State Boundary Cannot Be Changed Without Consent Of Its Legislature

While debating on the Act to enable the people of the Territory of Orleans to form a Constitution and State Government, the question of boundary was argued. It was pointed out by Mr. Pitkin (R. Conn.), that Congress had liberty to alter the boundary before they made them a State but not after, because after the territory becomes a State her boundaries cannot be altered without her consent. (See THE HISTORY OF CONGRESS. H. R. 11th Cong. 3rd. Sess. 1811, p. 519).

In this connection, it should be recalled that after the State was admitted by Act of April 8, 1812, Congress passed an Act on April 14, 1812, to enlarge the landward limits of the State, with the proviso: "In case the legislature of the State of Louisiana shall consent thereto."

In like manner the U. S. Senate took the official position that it had no power to change the boundaries of a State without its consent. See Interveners' Motion and Brief, footnote 4.

Finally, by Act of February 20, 1811, Congress passed the Enabling Act for the Territory of Orleans

and described its territorial limits as including **all that part of the Louisiana Territory ceded by France** to the United States on April 30, 1803 **"contained within the following limits,** that is to say: Beginning at the mouth of the River Sabine; thence, by a line to be drawn along the middle of said river, **including all islands** to the thirty-second degree of latitude, etc., thence, bounded by the said Gulf, to the place of beginning, **including all islands** within 3 leagues of the coast;"

It must be borne in mind that what Congress did in the Enabling Act of 1811, as well as in the Act of Admission on April 8, 1812, in describing that part of Louisiana Territory to be included within the limits of said Orleans Territory and the State of Louisiana was describing their boundaries or "limits" and not granting or merely including islands.

Strange, although the first part of the description in both Acts describes the State's Western boundary as beginning at the mouth of the River Sabine thence "along the middle of the said River, including all islands," the U. S. brief is perfectly willing to admit that that part of the description fits Louisiana's western boundary as the middle of the Sabine River. U. S. Brief p. 107.

But, when the same language is used at the end of the boundary description, within 3 leagues from the coast as including all islands, the U. S. brief contends that this same manner of descriptive language includes only the islands but not the distance at 3 leagues from coast.

The brief likewise refuses to accept the word "Coast" and says that when the State entered the

Union its boundary was at the shore, or 3 miles from shore. P. 138.

U. S. Brief Would Have Political Statement Supercede Acts Of Congress And Change State Boundary Without Its Consent

In their utter disregard for the authority of Congress to admit new States into the Union within prescribed limits under Section 3, Article IV of the Constitution, the Act of Congress fixing the limits of Louisiana's boundary "within 3 leagues of the coast", in the Gulf of Mexico; and the Submerged Lands Act of Congress quitclaiming to the State its submerged lands and natural resources within the boundaries of the State as they existed at the time such State became a member of the Union, extending from the coastline not more than 3 marine leagues into the Gulf of Mexico, (which has been recognized by this Court as valid legislation, R. I. vs. La. 347 U. S. 272), the U. S. Brief states the following:

@ p. 38:

> "If the State, as so described, was entitled to a marginal belt in the Gulf, that must have resulted **not from the terms of the description** but from a general national policy * * * The United States has always limited itself to a claim of a marginal belt of not more than three geographic miles. In this view, it is unnecessary to decide whether Louisiana in fact had a marginal belt when it entered the Union."

@ p. 70:

> "As already noted, it is therefore unnecessary to consider whether Louisiana had a 3-mile boundary before those enactments, either by vir-

tue of the general federal claim of 3 miles or otherwise. It is sufficient to know that, for the purposes of the Submerged Lands Act, the maritime boundary of the State is 3 miles in the Gulf of Mexico."

@ p. 102:

"Neither Act (Submerged Lands, or Outer Continental Shelf), purports to restrict State boundaries."

@ p. 71:

"The Secretary of State has furnished the Attorney General with a statement, for presentation to the Court in this case." * * *

"We submit, however, that the Secretary's statement alone is enough to conclude the matter here."

If such be the case, then the State Department supersedes the Congress and the jurisprudence established to the contrary by this Court as well.

However, the entire basis of the position taken in the U. S. Brief regarding the alleged traditional 3-mile rule as a State's maritime boundary, U. S. Brief 59, 60, 108, 149, 156, etc., is made irrelevant by the very admissions made in their brief, as follows:

@ p. 105:

"This case involves rights of a proprietary nature."

@ p. 110:

"We fully agree with Louisiana that what is involved here is a domestic dispute as to rights

to exploit the resources of the Continental Shelf. However, Congress has chosen to allocate those rights by reference to State boundaries."

Controversies over such matters of property rights and domestic boundary are within the exclusive jurisdiction of the Courts, and not any political branch of the government.

In **United States v. Texas**, 1892, 143 U. S. 621, 12 S. Ct. 488, 491, this Court held:

"A controversy between the United States and a State concerning the boundary between the State and a territory of the United States does not fall within the principle of the cases which hold that the courts have no jurisdiction to determine 'political questions.' That principle applies to controversies with independent nations, the determination of which is committed to the executive department of the government."

"And referring to Foster v. Neilson and U. S. v. Arrendondo (upon which the United States brief relies), the Court said, 'these cases relate to questions of boundary between foreign nations and have no application to a question of that character arising between the general government and one of the States composing the Union.'"

Again this Court held,

"* * * that without the clear authority of the law of Congress, **the executive can never**, by determining a so-called political question, or by construing an Act of Congress or a treaty, **conclude the rights of persons or property under the protection of the Constitution and laws of the United States, or conclude the Courts of the United States in a determination of these rights.**" **In re: Cooper**, 143 U. S. 472, 12 S. Ct. 453, 459

State Limits 3 Leagues From Coast In Gulf

In like manner, although the Submerged Lands Act acknowledges State title to and quitclaims all submerged lands and resources within a maximum of 3 leagues from coast in the Gulf of Mexico, the U. S. brief says that the grant there made to the State was in fact limited to 3 marine miles therefrom,—showing that, although the Attorney General's suggestion to the Senate Committee as above to limit the area of the Submerged Lands Act to 3 miles from shore was rejected by Congress, the same contention is made here with the evident hope that the Court likewise will ignore or now reject the plain provisions of the Submerged Lands Act extending to a maximum of 3 leagues from coast in the Gulf of Mexico.

La. Act 33 Of 1954

The U. S. brief likewise misconstrues Louisiana Act 33 of 1954, a photostatic copy of the original of which Act is attached as "Exhibit 5" to Interveners' motion for leave to file intervention and supporting brief.

A reading of this Act will show simply that its preamble recites that under Section 3 of Article IV of the U. S. Constitution, Congress admitted Louisiana as a State into the Union and fixed its gulfward boundary at 3 leagues from coast; that pursuant to Acts of Congress of February 10, 1807 and February 19, 1895, agencies of the federal government authorized by said Acts designated and defined the Louisiana coast line; that this Court held that the waters inside of said coast line designated and defined under said Act of 1895 off New York harbor are as much a part of the inland waters of the United States "within the

meaning of this Act" as the harbor within the entrance; and that another Federal Court held that **the purpose of said Act was to define the inland waters of the United States**; (contrary to the U. S. brief, contention that said coast line is only a navigation line, p. 133); and said Act provided that the State's historic boundary should be **redefined** to avoid confusion; therefore, said Act provided that the historic gulfward boundary of the State extended 3 marine leagues from coast into the Gulf of Mexico, and that the coast line of the State be accepted and approved as designated and defined in accordance with the applicable Acts of Congress as detailed therein, and as shown above in Sections 82.95 and 82.103 of PART II C. G.-169, Re: **Boundary Lines of Inland Waters.**

Therefore, said Act 33 of 1954 does not seek to extend in any manner Louisiana's historic boundary, nor does the Act require approval of Congress under provision of the Submerged Lands Act to entitle the State to its submerged lands and resources 3 leagues from coast, because said Act merely redefined its original boundary as fixed by Congress and as described in its 1812 Constitution adopted under the Enabling Act prior to and at the time of its admission as a State, which likewise was approved by the Act of Congress of April 8, 1812.

Section 4 of said Act, 67 Stat. 29, regarding **SEAWARD BOUNDARIES** provides:

* * * "Nothing in this section is to be construed as questioning or in any manner prejudicing the existence of any State's seaward boundary beyond three

geographical miles if it was so provided by its Constitution or laws prior to or at the time such State became a member of the Union, or if it has been heretofore approved by Congress."

The boundary of the State of Louisiana, defendant, as described in its Constitution of 1812, prior to and at the time it became a member of the Union, and as approved by and again described in the Act of Congress of April 8, 1812, which admitted the State into the Union, is three leagues from coast in the Gulf of Mexico.

Nowhere in the State's original Constitution or in the Act of Congress admitting Louisiana as a State into the Union and fixing its boundary will any reference be found fixing its gulfward boundary as "3 miles" or as any distance from "shore" but to the contrary the only gulfward boundary described therein is "3 leagues" from "coast."

Said 3 leagues from coast historic boundary of the State of Louisiana, defendant, as fixed by the Act of Congress admitting it as a State into the Union on April 8, 1812, has been adjudicated upon by this Court in **Louisiana v. Mississippi**, 202 U. S. 1, 26 S. Ct. 408, 416, as follows:

> "2. The state of Louisiana was admitted into the Union by the act of Congress approved April 8, 1812 (2 Stat. at L. 701, chap. 50), which commenced as follows:
>
> "'Whereas, the representatives of the people of **all that part of the territory** or country **ceded** under the name of 'Louisiana' by the treaty made at Paris on the thirtieth day of April, one thousand eight hundred and three, between the United

States and France, contained within the following limits, that is to say: Beginning at the mouth of the River Sabine; thence by a line to be drawn along the middle of said river, including all islands, to the thirty-second degree of latitude; thence due north to the northernmost part of the thirty-third degree of north latitude; thence along the said parallel of latitude to the River Mississippi; thence down the said river to the River Iberville; and from thence along the middle of the said river and Lakes Maurepas and Pontchartrain to the Gulf of Mexico; thence bounded by the said gulf to the place of beginning including all islands within three leagues of the coast; . . .' (Emphasis added, to show that the limits fixed were "within 3 leagues of the coast.")

"Map of diagram No. 1, given in the opening statement, shows the limits as thus defined."

A reprint of this map of diagram No. 1 with a reprint of the map attached to Act 33 of 1954 on the same scale, marked diagram No. 2, is attached hereto, marked Interveners' Exhibit 2.

From an examination of these two maps, it will be seen that the outer boundary line, or gulfward limit of the State of Louisiana as shown in Diagram No. 1, held by this court to be a correct showing of the State limits as defined in the Act of April 8, 1812, compares with the outer gulfward boundary of Louisiana as shown on the map officially adopted by Act 33 of the 1954 Louisiana Legislature."

It is regrettable that so much time was needed to cover so many erroneous statements, and conclusions found in the brief for the U. S. in support of motion for judgment.

If Interveners are to be bound by the judgment and orders of this Court in this case, they should be granted leave to intervene to properly and adequately represent their legal and property interests, as shown in their motion for leave to file intervention, supporting brief and answer and as further herein shown.

CONCLUSION

It is respectfully submitted that the order denying Interveners' right of intervention and to be heard in this cause should be reconsidered, and recalled, by the Court and an order rendered granting the same.

Respectfully submitted,

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April 1, 1957.

PROOF OF SERVICE

I certify that I served copies of the within motion and brief on the Attorney General and Solicitor General of the United States by Air Mail addressed to their offices in the Department of Justice Building, Washington, D. C., and by mailing same to the Attorney General of Louisiana to his office, State Capitol, Baton Rouge, La., and to the other attorneys of record for the State at their addresses.

Of Counsel for Interveners, Defendants, and a member of the Bar of the U. S. Supreme Court.

NOTE

Note

Exhibits of Brief 26 are found on Card 11, in all their pristine illegibility.

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No. 11, ORIGINAL

In the Supreme Court of the United States

OCTOBER TERM, 1956

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA

Reply of the State of Louisiana to Brief of the United States on Motion For Judgment

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No. 11 ORIGINAL

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v.

STATE OF LOUISIANA

Reply of the State of Louisiana to Brief of the United States on Motion For Judgment

Louisiana's original brief in opposition to the motion of the United States for judgment was in the hands of the printer when the Plaintiff's brief in support of its motion for judgment was served. This reply of the State has therefore been prepared separately. We will not endeavor here to answer all points set out in Plaintiff's brief for the reason that many of these points were anticipated and answered in our original brief. We will, instead, direct attention only to certain erroneous statements and conclusions of law and fact contained in the Federal Government's brief.

Louisiana particularly challenges those portions of the plaintiff's brief directed at the following untenable propositions:

1. The untenable proposition that the Court's decree of December 11, 1950 in *United States v. Louisiana*, 340 U. S. 899, is *res judicata* with respect to lands and resources within twenty-seven miles of the coast, and that the United States is entitled to an accounting of funds derived therefrom.

2. The untenable proposition that the United States is entitled to judgment on it's motion as a matter of law.

3. The untenable proposition that although the boundaries of the State and of the United States are co-extensive, the boundaries of the United States now extend and have always extended only three miles offshore.

4. The untenable proposition that the United States has never recognized or approved a three league boundary in the Gulf of Mexico.

5. The untenable proposition that submerged lands were not attributes of sovereignty, did not pass to states upon admission, and that Spain and France never claimed anything seaward of the Gulf shores of the Louisiana territory.

6. The untenable proposition that the Submerged Lands Act and the Outer Continental Shelf Lands Act did not infringe on the Constitutional rights of the State of Louisiana.

7. The untenable proposition that the equal footing clause does not entitle Louisiana to boundaries more than three miles offshore.

I

THE COURT'S DECREE OF DECEMBER 11, 1950 IN UNITED STATES v. LOUISIANA, 340 U.S. 899, IS NOT RES JUDICATA AS TO THE ISSUES INVOLVED IN THE PRESENT CONTROVERSY

The original proceeding brought by the United States against Louisiana and decided by the decree of this Court of December 11, 1950 involved issues which are different and distinct from the matters presented to the Court in the present controversy. In that case the United States alleged that it was the owner in fee simple of lands, minerals and other things underlying the Gulf of Mexico and lying seaward 27 marine miles. Neither the Submerged Lands Act nor the Outer Continental Shelf Lands Act were involved in that case, because the Acts were not passed until three years after the case had been decided. No question was presented as to the location of the State's boundaries or of the national maritime boundary. In fact the Court in its opinion stated (339 U.S. 699, 705):

> "The matter of State boundaries has no bearing on the present problem."

In the present proceeding the matter of State boundaries and the matter of the national maritime boundary are squarely presented. Thus, on page 11 of the government's brief in support of its motion for leave to file the complaint in this case, govern-

ment counsel discusses the Submerged Lands Act and the location of State boundaries pursuant to that Act, and then states, "Congress expressed no view as to the location of the boundary, intending and expecting any dispute regarding its location to be determined by this Court." Again, in its memorandum in reply to Louisiana's brief in opposition to the motion for leave to file complaint, government counsel states on page 2, that "our present problem involves finding, as a limiting factor, the location the national maritime boundary" and that "the State's boundary cannot extend beyond that of the nation." Furthermore, in the motion for judgment and statement with respect to that motion, Plaintiff's counsel states that the claim of the United States in the present controversy rests upon the effect of this Court's former decision "and the location of the national maritime boundary along the coast of the State." Similar statements are contained in the government's memorandum in opposition to the motion by the State of Louisiana to take depositions.

Not only were different issues involved in the original proceeding but the decision of the Court in that proceeding did not decide the issues that are presented in the present controversy. The original decree did not hold that the United States had any property rights in the continental shelf but that it had "paramount rights" 27 miles offshore from the State of Louisiana. The decree was based upon the decision

in the California case, and Mr. Justice Frankfurter pointed out in his dissenting opinion (339 U.S. 699, 706):

> "In rejecting California's claim of ownership in the offshore oil the Court carefully abstained from recognizing such claim of ownership by the United States. This was emphasized when the Court struck out the proprietary claim of the United States from the terms of the decree proposed by the United States in the California case."

This Court has therefore not decided the question of ownership of the subsoil, seabed and natural resources of the continental shelf offshore from Louisiana, nor has it determined the boundaries of the State nor the national maritime boundary in the Gulf of Mexico. In any event it has rendered no decision as to the bearing which the Acts of Congress, passed in 1953, have on this subject.

As we have pointed out in Louisiana's answer and in our original brief, the Fifth Circuit Court of Appeals has held that the Acts of Congress relating to the submerged lands and the outer continental shelf have nullified the theory of paramount rights and extra territorial sovereignty on which the three original tidelands decisions were based.[1]

Furthermore, constitutional questions are presented here (paragraph IV of Louisiana's answer),

---

[1]Superior Oil Company v. Fontenot, 213 F 2d. 565, 569, cert. den. 348 U.S. 837, 99 L.Ed. 660.

which questions were not involved in any of the prior proceedings.

As stated in our original brief the Court was without the benefit of a declaration by Congress as to the extent of American territory when it decided the original tidelands cases, and since these three decisions were rendered Congress has declared the extent of the American territory. The present controversy therefore involves questions of fact and questions of law which were not considered in the original proceeding and were not decided by the Court.

When the original motion to modify decree was filed by the United States on May 19, 1955, in this current phase of the controversy, Louisiana successfully opposed that motion to modify the courts original decree of 1950 on the basis of it being an entirely different case. This court must have considered the different natures of the original suit against Louisiana and the present one, when it dismissed the governments motion to modify the former decree.

The principle of *res judicata* extends only to the facts and conditions as they were at the time the judgement was rendered, and to the legal rights and relations of the parties as fixed by the facts so determined. When new facts or conditions intervene before the second suit, furnishing a new basis for the claims and defenses of the parties respectively, the issues are no longer the same, and hence the former judgment cannot be pleaded in bar in the subsequent action. Thus,

if a relevant change in the law has taken place, matters arising thereunder are not concluded by a judgment rendered under the law as it formerly existed.

In *Commissioner v. Sunnen*, 333 U. S. 591, 600, 92 L. Ed. 898, 907, this Court said:

> "... If the legal matters determined in the earlier case differ from those raised in the second case, collateral estoppel has no bearing on the situation. See Travelers Ins. Co. v. Commissioner (CCA 2d) 161 F2d 93. And where the situation is vitally altered between the time of the first judgment and the second, the prior determination is not conclusive. See State Farm Mut. Auto. Ins. Co. v. Duel, 324 U. S. 154, 162, 89 L.Ed. 812, 818, 65 S. Ct. 573; 2 Freeman, Judgments, 5th ed. (1925) § 713."
>
> * * *
>
> " . . . Since the cause of action involved in the second proceeding is not swallowed by the judgment in the prior suit, the parties are free to litigate points which were not at issue in the first proceeding, even though such points might have been tendered and decided at that time. . . "[2]

No judicial estoppel results which would prevent litigating points not at issue previously. Plaintiff's argument that the prior decision against Louisiana is *res judicata* has no merit.

---

[2]See also:
State Farm Mutual Insurance Co. v. Duel, 324 U. S. 154, 162, 89 L.Ed. 812, 819;
Blair v. Commissioner, 300 U. S. 5, 8, 81 L.Ed. 465, 469;
Cromwell v. Sac County, 94 U. S. 351, 24 L.Ed. 195, 198.

Since the court's former decision cannot be *res judicata* as to this case, the government counsel's allegation that an accounting due by virtue of that former decree is owed by the state is neither factually correct nor legally sound. The Submerged Lands Act released all money claims of the United States (Section 3 (b)) when recognizing the pre-existing right of the State to the subsoil, seabed, and natural resources therein. There is no other provision in the act relating to any other accounting.

Louisiana wishes to reiterate and preserve its asserted right (Answer p. 8) to an accounting from the United States of all sums derived by it from the area ultimately determined to belong to the State.

II

THE UNITED STATES IS NOT ENTITLED TO JUDGMENT ON ITS MOTION

Government counsel assert . . . "that all facts material to the Government's claim are subject to judicial notice, and that the United States is entitled to judgment as a matter of law" (Government's brief, p. 10). These bald conclusions are refuted by the very statements which follow, that the Submerged Lands Act ". . . left those states free to make what proof they could as to their boundary locations . . ." (Government's brief p. 28), and that the ". . . . Boundaries claimed to lie more than three miles from the coast are not among those 'approved and confirmed' by Section 4, but on the other hand that section provides

that it is not to be construed as 'questioning or in any manner prejudicing' such boundaries. The court, then, must look beyond the face of the act . . ." (Government's Brief, p. 27.), and illustrate pointedly why the court should grant Louisiana's motion to take depositions and deny the Government's motion for judgment.

Certainly this court cannot take judicial notice of all facts which go to prove Louisiana's historic boundary beyond three miles, which has not been prejudiced or questioned by the Submerged Lands Act, except by limitation. If no state can exceed the "foreign policy three mile limit", has not Congress done a useless thing in expressly stating this lack of prejudice of a state's historic boundary beyond three miles?

III

BOUNDARIES OF THE UNITED STATES HAVE BEEN DECLARED TO EXTEND TO THE EDGE OF THE CONTINENTAL SHELF AND THE BOUNDARIES OF THE COASTAL STATES ARE COEXTENSIVE WITH THOSE OF THE UNITED STATES

Plaintiff's counsel states on pages 12, 13 and 86 of his brief that the rights asserted by the United States in the submerged lands and resources of the Continental Shelf seaward of the alleged three mile limit are "extra territorial in their nature", and then states that the assertion of those rights by the Sub-

merged Lands Act did not constitute an enlargement of the national boundary.

Before discussing the foregoing statement attention should be directed to the fact that the Submerged Lands Act of May 22, 1953 did not attempt to enlarge the national boundary. It merely recognized, confirmed, established and vested in and assigned to the respective States title to and ownership of the lands beneath navigable waters, and the rights to use and administer resources thereunder. It was the Outer Continental Shelf Lands Act of August 7, 1953 which declared that "the subsoil and seabed of the outer continental shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition as provided for in this Act." (Sec. 3, 67 Stat. 462.)

There can be no doubt that the Outer Continental Shelf Lands Act deals with territorial rights and with property rights. This is apparent in the reading of the Act itself and it is also apparent from the reading of the Reports of the House and Senate Committees which recommended passage of the law. Section 8 of H. R. 4484 which became a part of the Outer Continental Shelf Lands Act and asserts federal jurisdiction and control over the outer continental shelf is explained thus in House Report No. 215, 83rd Congress, 1st session, page 27:

> "Section 8 of H. R. 4484 asserts Federal jurisdiction and control over the Continental Shelf areas beyond original State boundaries, thus

bringing the lands and resources within such areas into the same legal status as those acquired by the United States through cession or annexation; in the alternative, such lands and resources are subject to the doctrine of discovery. Adherence to the policy heretofore observed in connection with similar lands and resources brought under national dominion requires, as a matter of policy and law, that the property rights of individuals in and to such lands and resources be recognized and confirmed."

If the assertion of federal jurisdiction and control over the continental shelf brings the lands and resources within this area into the same legal status as those acquired by the United States through cession or annexation, as stated in the Committee Report, then it is evident that these lands and resources are a part of the territory of the United States, and are included in its boundaries. In effect this is the meaning of the House Committee Report. The reports and explanatory statements of Legislative Committees may be resorted to as indicative of the intent of Congress. [3]

This Court has defined "territory" as including waters of the sea over which the United States asserts and exercises jurisdiction. In *Cunard S. S. Co. v. Mellon*, 262 U. S. 100, 122, 67 L. Ed. 894, 901, the opinion reads:

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[3]U. S. v. Wrightwood Dairy Co., 315 U. S. 110, 125, 86 L.Ed. 726, 736;

Wright v. Mountain Trust Bank, 300 U. S. 440, 463, 81 L.Ed. 736, 744.

"Various meanings are sought to be attributed to the term 'territory' in the phrase, 'the United States and all territory subject to the jurisdiction thereof.' We are of opinion that it means the regional areas—of land and adjacent waters —over which the United States claims and exercises dominion and control as a sovereign power . . ."

Territory, jurisdiction and ownership are coextensive. Jurisdiction can only be exercised within the boundaries of the territory owned by the government. So an extension of jurisdiction and control over the Continental Shelf can result only from a recognition that the boundaries of the nation include the Shelf.

"Generally speaking, the proposition is true that, as to States, jurisdiction and the right of soil, go together".

New York v. Conn., 4 Dall. 1, 4, 1 L.Ed. 715, 716.

"The jurisdiction of a State is coextensive with its territory; coextensive with its legislative power." (Marshall C. J.)

U. S. v. Bevans, 3 Wheat. 336, 386-7, 4 L.Ed. 404, 416, affd., *Manchester v. Mass.*, 139 U. S. 240, 263, 35 L.Ed. 159, 166.

The following quotation from Hackworth's Digest of International Law, Volume II, page 674, demonstrates that the United States claims of the subsoil, seabed and natural resources of the continental shelf are property or territorial claims.

"Vattel's statement 'Who can doubt that the

pearl fisheries of Bahrein and Ceylon may lawfully become property?' ceases to cause any difficulty to even the stoutest upholders of the principle that the limits of the territorial belt are not more than three miles if it is realised that the exclusive right to the pearls to be obtained from the banks flowed from the ownership of the bed of the sea where the banks were situated, and not from any claim to maritime jurisdiction over the waters. . ."

In part B of the Appendix filed with it's brief, Louisiana set forth many international authorities which recognize that claims such as those made by the United States in the outer continental shelf are territorial claims.[4]

It therefore follows that the rights claimed by the United States are territorial rather than "extra-territorial" rights as asserted on pages 12, and 13 and 86 of the United States brief.

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[4]Mouton's "The Continental Shelf," pages 32, 33, 145, 146 and 154;

De Rayneval's "Institutions du droit de la nature et des gens" (Paris, 1803), page 161;

Riesenfeld's "Protection of Coastal Fisheries Under International Law," pages 165-170;

Westlake's "International Law," part I, pages 190 and 191;

Sir Cecil Hurst's "British Yearbook of International Law" (1923-1924) page 40;

Colombos' "International Law of the Sea" (1954), Third Edition, Section 353, pages 306 and 307;

Hackworth's "Digest of International Law", Volume II, pages 674-675.

Plaintiff's Theory of So-Called "Extraterritorial" Rights Is Untenable.

There is nothing in the Constitution and domestic laws of the United States, nothing in the common law, and nothing in international law that would give the federal government extraterritorial rights of the kind claimed here in any property anywhere.

The existence of any such extraterritorial rights was questioned by the Congressional Committees that recommended passage of the Submerged Lands Act. So in answer to this Court's ruling in the *California* case that the oil under these submerged lands "might well become the subject of international dispute and settlement", the Committee, in House Report No. 215, at page 38, replied:

> "The same thing might be said about oil under uplands."

In this connection Senate Report No. 133 at page 58 states:

> "Many witnesses were of the opinion that the construction of paramount rights as including fee ownership would, if carried to its logical conclusion, destroy the basic legal distinction between governmental powers under the Constitution on the one hand, and State or private ownership of real property on the other, because the 'paramount powers' of the United States do not depend upon whether the point at which they may need to be exercised is above or below low-water mark or on one side or the other of a line dividing a bay from the coastal waters."

The Senate Committee then repeats the House Committee's statement that the paramount rights of the United States in the submerged lands of the sea are no different from those possessed by it in the uplands, and concludes on page 59 of its report:

> "It is beyond doubt that the Federal Government cannot assert any lawful control over lands or resources that are not located within the borders of the several States or the Territories or which has not been committed to it by treaty or other international negotiations.
>
> "In *Massachusetts v. Manchester*, the Supreme Court said:
>
> 'There is no belt of land under the sea adjacent to the coast which is the property of the United States and not the property of the States.' "

These statements of the Congressional Committees pin-point the error in plaintiff's argument that the conduct of foreign relations and the national defense either require or justify ownership of the lands to be protected.

Section 4 of Article IV of the Constitution requires the United States to protect each State against invasion. It would therefore follow that defense on land as well as by sea "is a national, not a State concern," (*U. S. v. Louisiana*, 339 U. S. 699, 704). "National interests, national responsibilities, national concerns are involved" in the uplands of Louisiana and their resources, and in the rivers and lakes, as well as the seas and submerged lands beyond the coast

line of the State. But these national interests, responsibilities, and concerns of the federal government do not require that it have ownership or power of disposition over any of the properties of the State.

The power of eminent domain of the United States extends for federal purposes over the entire land, and private land may be used for national defense throughout the whole state; but this paramount right does not exclude the right of State ownership, or of private ownership. *Carried to its logical and proper conclusion, the theory of extraterritorial rights, based on the proposition that sovereignty with responsibility for defense and international relations necessarily and inseparably involve ownership of land, would result in the abandonment of all right of private ownership of land anywhere in the United States.*

The conclusion is therefore inescapable that the claims of the United States in this controversy are strictly territorial, and that only through an extension of the national boundary can the United States exercise jurisdiction over the Continental Shelf.

On page 100 of the plaintiff's brief the statement is made that no part of the Outer Continental Shelf was acquired by the United States in the Treaty of Cession by France in 1803. This is, of course, in keeping with plaintiff's insistence on ownership through extraterritorial sovereignty. But the legislative history of the Submerged Lands Act (House Report No. 215, p. 27) says that this federal jurisdiction over the shelf brings "the lands and resources within such areas

into the same legal status as those acquired by the United States through cession or annexation; in the alternative, such lands and resources are subject to the doctrine of discovery." The Committee of Congress was obviously referring to territorial as distinguished from so-called *extraterritorial rights* which it later, on page 38 of its report, *rejected as an unsound theory.* The Committee's reference to cession or annexation can only refer to the Louisiana Purchase of 1803, because no other cession or annexation agreement has ever been made with respect to the area.

The alternative proposition that these lands and resources are subject to the doctrine of discovery can give no title to the United States. The shelf was not acquired by occupation and prescription on behalf of federal government because the United States has never occupied it until this controversy arose, and such occupation was forced against the protest of Louisiana. Prior to this dispute the Shelf has always been exclusively occupied by the State.

Nor did the Federal Government acquire the Shelf or its resources by discovery. The resources, especially oil and gas, were discovered and developed by Louisiana. The United States must therefore, of necessity, rely on the so-called "extraterritorial rights" theory which has been discarded by Congress, and simply does not exist under our republican form of government.

The fact that the Outer Continental Shelf Lands

Act in Section 3 recognizes the character of the waters above the Shelf as high seas, and provides that the right to navigation and fishing therein shall not be affected, does not change the territorial nature of the claims asserted by the United States in the sea-bed and its resources. Plaintiff, of necessity, admits the territorial nature of submerged lands within three miles of the coast. Yet the right of innocent passage and navigation of the waters of this belt is recognized by the law of nations and by the laws of the United States. It is therefore not necessary to have absolute sovereignty over the seas above the submerged lands in order to have territorial rights in the subsoil, sea-bed, and natural resources of the shelf.

Plaintiff's counsel says that the concept of a marginal belt of territorial waters, subject to the jurisdiction of a coastal nation, is an encroachment upon the principle of freedom of the seas (Brief p. 39). Yet the United States claims that the exercise of jurisdiction, control, and power of disposition by it over the entire continental Shelf does not violate this principle. The only justification for this paradoxical statement by government counsel is that the term "Extraterritorial rights" possesses a magical formula which enables the government to by-pass the principle. This is indeed a proposition without precedent.

The statement of Secretary of State Dulles that "maintainance of the territorial three mile policy is more than ever a matter of vital interest to the United States" assumes that the United States is not now

claiming jurisdiction and control equivalent to title and ownership beyond the asserted three mile territorial boundary of the United States.

It is obvious that this self-serving statement has been used by counsel for the government where it best suits his purpose for a particular argument but such statement likewise points out the impossible situation counsel for the government has put himself in, and would put the United States in, in the conduct of its foreign affairs.

If we were to make the unsupported assumption that the boundary of the United States and the State of Louisiana does not extend to the edge of the continental shelf, by what authority would the United States exclude a foreign oil company from exploring and exploiting natural resources on the continental shelf beyond that territorial boundary of the state and the United States? From what source has this "special jurisdiction, extraterritorial in its nature," which ". . . does not constitute an extension of the territorial boundary of the nation . . ." been derived? (Govt's brief p. 86). And how does it coincide with the statement of Secretary of State Dulles that ". . . in view of the serious attacks which are now being made upon the freedom of the seas in various parts of the world, the maintenance of the traditional three-mile policy is more than ever a matter of vital importance to the United States"? (Letter of Secretary of State Dulles to Herbert Brownell, Jr., Attorney General, June 15, 1956, Govt. Br. p. 180).

Statements Of Congressmen Inadmissable in Construing Statute.

"On pages 27 to 31 of the plaintiff's brief statements made by various Congressmen are quoted to the effect that the Submerged Lands Act does not determine the location of the State boundaries in the Gulf of Mexico. Again we call attention to the fact that it is the Outer Continental Shelf Lands Act which extends the boundaries of the United States to the edge of the Continental Shelf. It would therefore follow that the statements made by Congressmen concerning State boundaries in the Submerged Lands Act are not relevant there. In any event it is generally held that statements by individual members of a legislative body as to the meaning of a bill, and which are made during general debate following its presentation by a Standing Committee, are inadmissible as an aid in construing the statute. In *Duplex Printing Press Company v. Deering*, 254 U. S. 443, 474, 65 L.Ed. 349 this Court stated that legislative debates are "expressive of the views and the motives of individual members, and are not a safe guide, and hence may not be resorted to, in ascertaining the meaning and purpose of the law making body."[5]

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[5]See also:

Sutherland, Statutory Construction, Third Ed., Vol. II, page 499, Section 5011;

McCaughn v. Hershey Chocolate Co., 283 U. S. 488, 493-4, 75 L.Ed. 1183, 1187;

Aldridge, et al v. Williams, 44 U. S. (3 How.) 924, 11 L.Ed. 469, 476.

Executive Determination of National Boundaries Is Not Conclusive on the Court

Government counsel says on page 63 of his brief that the Courts are bound to accept as correct and conclusive all declarations and determinations with respect to foreign affairs made by the Executive Branch of the government, and on page 65 et seq. states that a question as to the territorial boundaries of the United States is a political matter which can only be determined by the Executive Department. Then on page 71 *plaintiff's counsel makes makes the astonishing statement that the Secretary of State has advised the Attorney General in this very case that the national boundaries extend only three miles off-shore and that "the Secretary's statement alone is enough to conclude the matter here."* Never before have we been faced with such an astounding proposition that the Department of Justice can bring a suit on behalf of the United States for judicial determination, and then for another Executive department to determine the issues by a self-serving declaration as to a correct settlement of the controversy in the Court. This would indeed prove that "the King can do no wrong." As a matter of fact, plaintiff does cite the British Courts as authority for this incredibly one-sided principle of law. So on page 74 of plaintiff's brief Lord Sumner is quoted as having said:

> "The best evidence is a statement, which the Crown condescends to permit the appropriate Secretary of State to give on its behalf."

Again on page 77 of the government brief Lord Justice Atkin is quoted:

> "Any definite statement from the proper representative of the Crown must be treated as conclusive."

The decisions of our own Courts which are set forth on pages 65 to 68 of plaintiff's brief merely refer to decisions made by the Executive Department in the handling of matters connected with our foreign relations such as the political status of foreign governments, the qualifications of Ambassadors and foreign representatives, and the like. It would be indeed an anomalous and unheard-of principle in our Republican form of government if the Department of State were permitted to make a conclusive determination as to the meaning of Acts of Congress which declare the extent of the national domain. The principle of the separation of powers inherent in our form of government would be utterly destroyed if such power of interpretation could be taken away from the Courts and lodged in the executive.

However this Court has many times held that an executive or administrative construction of a statute, though sometimes entitled to weight, is not controlling on the Courts.[6]

Counsel for plaintiff on page 76 of his brief insti-

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[6]Burnet v. Chicago Portrait Co., 285 U. S. 1, 16, 76 L.Ed. 587, 595;

Automatic Canteen Co. v. F.T.C., 346 U. S. 61, 74, 97 L.Ed. 1454, 1463.

tutes a discourse on the proposition that the State Department's declaration is binding and conclusive on the Court, and cannot be controverted by other evidence or proof, and again quotes British and American cases dealing with the diplomatic status of persons, and the political status of foreign sovereigns. The boundaries of the United States and of the individual States on land and on sea are matters involving interpretation of Acts of Congress, of treaties entered into by the executive with the consent and approval of two-thirds of the Senate, as well as facts of history and other facts of an evidentuary nature. This Court has never held that such matters can be determined by any branch of the Executive Department in a way which cannot be contradicted or controverted in a judicial proceeding. It is a well known rule of law that Courts are not bound to follow, nor are they justified in following an executive construction which is clearly erroneous or which lacks uniformity, clarity or notoriety, and that where such an interpretation is unreasonable and clearly erroneous it should always be rejected.[7]

The statement of the Secretary of State that the

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[7]Sutherland, Statutory Construction, Third Ed., Vol. II, page 514 and 515, Section 5104;

L & N Railway Co. v. U. S., 282 U. S. 740, 75 L.Ed. 672, 684;

Burnet v. Chicago Portrait Co., 285 U. S. 1, 76 L.Ed. 587;

T & P v. U. S., 289 U. S. 627, 640, 77 L.Ed. 1410, 1423;

Norwegian Products Co. v. U. S., 288 U. S. 294, 315, 77 L.Ed. 796, 807.

maritime boundaries of the United States extend only three miles offshore, and that it has always been the policy of the United States to so restrict its maritime boundary, is not in accord with the facts and is utterly erroneous.

In our original brief beginning at page 109, and in Section E of the Appendix filed separately with that brief, we have pointed out numerous instances in which the Department of State has asserted territorial ownership of submerged lands and waters in excess of three miles. This is particularly true in the Gulf of Mexico where the three mile limit has never been asserted. A further discussion of this subject will be made later on in this brief.

A reference to many of the statements made by representatives of the Department of State and quoted on pages 39 to 53 of the plaintiff's brief show that recognition of the three mile rule was either a temporary expedient, or related only to the Atlantic sea board, or both.

The statement of Thomas Jefferson of November 8, 1793 quoted on page 39 of the government's brief specifically states that the United States is entitled to a much broader marginal belt and that the ultimate extent of this nation's claims in the sea is reserved "for future deliberation," and that the three mile limit would be accepted "for the present" and in connection with the war then prevailing among European powers.

John Quincy Adams in his memoirs, Vol. 1 p. 375-6 quotes President Jefferson's views on this subject as follows, (I Moore 703):

"The President (Mr. Jefferson, in an informal conversation) mentioned a late act of hostility committed by a French privateer near Charleston, S.C., and said we ought to assume, as a principle, that the neutrality of our territory should extend to the Gulf Stream, which was a natural boundary, and within which we ought not to suffer any hostility to be committed. Mr. Gaillard observed that on a former occasion in Mr. Jefferson's correspondence with Genet, and by an act of Congress at that period, we had seemed only to claim the usual distance of three miles from the coast; but the President replied that he had then assumed that principle because Genet, by his intemperance, forced us to fix on some point, and we were not then prepared to assert the claim of jurisdiction to the extent we are in reason entitled to; but he had taken care to reserve this subject for further consideration with a view to this same doctrine for which he now contends."

The misinterpretation given to the letter written by Thomas Jefferson, then Secretary of State, on November 8, 1793, to the British Minister and to Genet, the French Minister, that our nation's maritime boundary was three miles from the seashores was repudiated by President Jefferson. The following is taken from Fulton's "The Sovereignty Of The Sea", 1911, p. 575:

"It may be mentioned here that the claims

which have been put forward by the United States as to the extent of their territorial or jurisdictional waters have varied greatly on different occasions. The above declaration to M. Genet was, for instance, repudiated by President Jefferson as establishing a fixed limit; and it was claimed that the limit of neutrality should extend '*to the Gulf Stream, which was a natural boundary, and within which we ought not to suffer any hostility to be committed.*' On another occasion, in a controversy about the right of jurisdiction they claimed that the extent of neutral immunity off the American coast ought at least to correspond with the claims maintained by Great Britain around her own territory, and that no belligerent rights should be exercised within 'the chambers formed by headlands, or anywhere at sea within the distance of four leagues, or from a right line from one headland to another.' The American Government endeavored to obtain from England in the same year the recognition of a territorial belt six miles in breadth, and in the draft treaty proposed in 1807 a distance of five miles was in reality specified."

Mr. Jefferson's repudiation of the temporary three mile expedient set forth in his letter of November 8, 1793 and his support for a boundary to the Gulf Stream appears in his 5th Annual Message to Congress on December 3, 1805, quoted on page 115 of our original brief. Following this message of the President, Congress passed the Act of February 10, 1807. This Act requested the President to cause a survey to be made of the coasts of the United States within 20 leagues

of its shores, and authorized President Jefferson to take steps beyond 20 leagues and to the Gulf Stream to serve the commercial interests of the United States. The following provisions are contained in Section 2 of the Act:

> "Sec. 2. And be it further enacted, That it shall be lawful for the President of the United States, to cause such examinations and observations to be made, with respect to St. George's bank, and any other bank or shoal and the soundings and currents beyond the distance aforesaid to the Gulf Stream, as in his opinion may be especially subservient to the commercial interests of the United States."

The policies of the United States respecting its maritime jurisdiction in the sea at the time of Louisiana's admission into the Union, and as reflected in the documents quoted above would justify a marginal belt of territorial waters and submerged lands substantially in excess of three leagues from Louisiana's coast. Other documentary evidence supporting this statement appears on pages 109 and to 119 of Louisiana's original brief.

The Treaty between the United States and Great Britain of November 19, 1794 quoted on page 41 of the government brief did not recognize the range of cannon shot as marking the territorial limits of the two countries in the sea. All that this Treaty stipulated on this subject was that "neither of the said parties shall permit the ships or goods belonging

to the subject or citizens of the other, to be taken within cannon shot of the coast." The purpose of limiting protection to the range of cannon was to relieve either party of engaging in naval warfare further at sea. It was reasonable to stipulate for protection within the range of cannon from the shore, but it would have been an entirely different proposition to agree to protect the ships of another power any greater distance from the shore. This agreement, too, related specifically to the European war prevailing at that time.

The statement of Timothy Pickering on September 2, 1796, quoted on page 42 of plaintiff's brief specifically states that the three mile limit had been fixed "for the purpose of regulating the conduct of the government in regard to any events arising out of the present European war".

The Treaty between the United States and Algiers of July 6, 1815 referred to on page 43 of the United States brief did not limit territorial jurisdiction to three miles but merely agreed that if "either of the contracting parties shall be attacked by an enemy within cannon shot of the fort of the other, she shall be protected as much as is possible."

Similarly, the Treaty of October 20, 1818 with Great Britain (U.S. Brief, page 43) did not fix territorial limits with either Great Britian or the United States. In fact the Treaty did not refer to the waters of the United States at all. In that Treaty the United States merely renounced its right to fish within three miles of the British dominions in America.

Secretary of State Seward is quoted on pages 45 to 47 of plaintiff's brief to the effect that the United States insists uniformly on a three-mile limit. It was Secretary of State Seward who negotiated the Treaty with Russia for the purchase of the Alaska territory in March, 1867. On April 5, 1824, Great Britain and Russia had executed a Treaty fixing the maritime boundaries west of Canada and Alaska "not to exceed 10 marine leagues from the line of coast." This description was made the basis of negotiations between Russia and the United States conducted by the same Secretary Seward. (See Senate Documents Vol. 48, 61st Cong. 2d Sess., 1909-1910, Treaties, etc., 1776-1909, Vol. 2, p. 1521, Convention ceding Alaska.) Article IV, 2nd Section of the Treaty provides for an Alaska territory maritime boundary not to exceed 10 marine leagues from coast. (2 Malloy's Treaties 1522)

Even though Secretary Seward filed a mild protest with the Spanish Minister in 1862 to accommodate Great Britain in its quarrel with Spain, the fact remains that Spain did not accede. (See Masterson, "Jurisdiction In Marginal Seas"; p. 268)

Regarding the claim made for the United States in Mr. Dulles' letter to Mr. Brownell that, traditionally foreign policy fixed the nation's maritime boundary at 3 miles, it is well to note that a careful reading of these treaties and diplomatic exchanges will show that they only subscribed "in principle" to such 3 mile-belt ideas, but that none of these treaties, conventions,

conversations and diplomatic exchanges ever fixed the maritime limit of the United States at 3 miles. (See Masterson p. 399, footnote 54).

A statement of Secretary of State Bayard is quoted on pages 48 and 49 of plaintiff's brief, and in this statement Mr. Bayard indicates that the three mile rule has been settled *in so far as the eastern coast of America is concerned.* In this connection he states that "so far concerns the eastern coast of North America, the position of this department has uniformly been that the sovereignty of the shore does not, so far as territorial authority is concerned, extend beyond three miles." He further states (U. S. Brief 49) "and during our fishery negotiations with Great Britain we have insisted that beyond the three mile line British territorial waters on the *northeastern coast* do not extend. Such was our position in 1783, in 1794, in 1815, in 1818".

Opinions of other State Department officials and attorneys are quoted on pages 91 and 92 of plaintiff's brief to the effect that the Outer Continental Shelf Lands Act does not extend State or national boundaries beyond three miles from coast. These statements were made during hearings on the Submerged Lands Act, and it is significant that Congress rejected the opinions and conclusions of these witnesses. The Submerged Lands Act as passed by Congress specifically provides that historic boundaries in the Gulf of Mexico are recognized as far as three leagues from the coast line. (Sec. 2b, 67 Stat. 29, 43 U. S. C. 1301 (b).

The statement of Assistant Secretary Morton (U. S. Brief 92) that the claim made by the United States to the seabed, subsoil, and natural resources of the Continental Shelf "is without precedent" is a great understatement in one respect; that is, that it is without support or authority in the Constitution of the United States and in the history of the nation. Never before has the Federal Government made such an unwarranted excursion into the domain and sovereign rights of the States of the Union.

The United States has therefore not uniformly insisted on a limit of three miles to territorial jurisdiction on all of its coasts, and it has particularly not done so with reference to the Gulf of Mexico. In any event the Outer Continental Shelf Lands Act has declared the territorial jurisdiction of the Nation and of the coastal States to extend to the edge of the continental shelf on all the sea coasts of the continental United States.

The Executive Department is not the only department of our government which is charged with responsibility for, and power over, the foreign relations of the United States. Article I, Section 8 of the Constitution delegates to Congress many powers concerning foreign relations including the national defense, commerce with foreign nations, naturalization laws, the definition and punishment of piracies and felonies commited on the high seas, and defenses against the law of nations, declaring war, granting letters or marque and reprisal, and making rules con-

cerning captures on land and on water, and approval by the Senate of all treaties made with foreign nations. This Court has therefore repeatedly ruled that questions relating to the foreign affairs of the nation are committed to the Legislative and Executive Departments of the government.[8]

In *Oetjen v. Central Leather Company*, 246 U. S. 297, 302, 62 L.Ed. 726, 732, this Court said:

> "The conduct of the foreign relations of our government is committed by the Constituion to the executive and legislative — 'the political' — departments of the government . . ."

Since the conduct of our foreign relations is entrusted to the legislative as well as the executive branches of the government, the latter cannot by executive interpretation nullify or modify what Congress sees fit to do in the legislative forum. Nor can Congress contradict or modify the words of a treaty by a subsequent resolution.

In the case of *The Diamond Rings*, 183 U. S. 176, 180, 46 L Ed. 138, 142, we find:

> "The meaning of the treaty cannot be controlled by subsequent explanations of some of those who may have voted to ratify it. What view the House might have taken as to the intention

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[8] Oetjen v. Central Leather Co., 246 U. S. 297, 62 L.Ed. 726;
Jones v. U. S., 137 U. S. 202, 212, 34 L.Ed. 691, 696;
U. S. v. Lynde, 11 Wall. 632, 20 L.Ed. 230;
State v. Reynes, 9 How. 127, 13 L.Ed. 74.

> of the Senate in ratifying the treaty we are not informed, nor is it material; and if any implication from the action referred to could properly be indulged, it would seem to be that two-thirds of a quorum of the Senate did not consent to the ratification on the grounds indicated."

If the Congress cannot thus explain away a treaty, by what superior prerogative can the Secretary of State do so?

Plaintiff's entire argument on this subject is based on a false premise. That premise is that the question of boundary in this case involves foreign relations. This Court has made it clear that controversies over boundaries between the United States and any of the States of the Union do not involve political determinations of an international nature. Mr. Justice Harlan pointed out the difference between the rules governing the determination of domestic and those governing the determination of international questions in boundary disputes, in the case of *United States v. Texas*, 143 U. S. 621, 638-641, 36 L.Ed. 285, 290-291, thus:

> "In support of the contention that the ascertainment of the boundary between a Territory of the United States and one of the states of the Union is political in its nature and character, and not susceptible of judicial determination, the defendant cites Foster v. Neilson, 27 U. S. 2 Pet 253, 307, 307 (7:415, 433, 434); Cherokee Nation v. Georgia, 30 U. S. 5 Pet. 1, 21 (8:25, 32); United States v. Arredondo, 31 U. S. 6 Pet. 691,

711 (8:547, 554); and Garcia v. Lee, 37 U. S. 12 Pet. 511, 517 (9:1176, 1178).

In Foster v. Neilson, which was an action to recover certain lands in Louisiana, the controlling question was to whom the country between the Iberville and Perdido rightfully belonged at the time the title of the plaintiff in that case was acquired . . .. After examining various articles of the Treaty of St. Ildefonso, Chief Justice Marshall, speaking for the court, said:

'In a controversy between two nations concerning national boundary, it is scarcely possible that the courts of either should refuse to abide by the measures adopted by its own government. There being no common tribunal to decide between them, each determines for itself on its own rights, and if they cannot adjust their differences peaceably, the right remains with the strongest. The judiciary is not that department of the government to which the assertion of its interests against foreign powers is confided . . .'

In United States v. Arredondo, the court, referring to Foster v. Neilson, said: 'This court did not deem the settlement of boundaries a judicial but a political question — that it was not its duty to lead, but to follow the action of the other departments of the government.' The same principles were recognized in Cherokee Nation v. Georgia and Garcia v. Lee.

These authorities do not control the present case. They relate to question of boundary between independent nations, and have no application to a question of that character arising between the general government and one of the states com-

posing the Union, or between two states of the Union. . . that a controversy between two or more states, in respect to boundary, is one to which, under the Constitution, such judicial power extends, is no longer an open question in this court. . .

In view of these cases, it cannot, with propriety, be said that a question of boundary between a Territory of the United States and one of the states of the Union is of a political nature, and not susceptible of judicial determination by a court having jurisdiction of such a controversy . . ."

Although the above quoted case did not involve the external boundaries of the United States the principle is not different.

As between the United States and other nations, the political branches declare the extent of our national boundaries. As between the states, or the states on the one hand and some adjoining Federal territory on the other, the boundary is a judicial question. Whether Louisiana's boundary is three leagues from our coast is specifically left a judicial question by the Congress and the President. Whether Louisiana's boundary is further from our coast is a constitutional question which we raise.

The Government's brief states (page 11):

"Under the submerged Lands Act, the location of the State boundary is left to be judicially ascertained. We consider it fundamental that the state boundary cannot be farther seaward than

> the national boundary. The location of the national boundary is a political matter to be determined *by the political branches* of the government; their determination regarding it is binding upon the courts and is subject to judicial notice."

We agree with all this. From that point the government's brief proceeds to a conclusion utterly ignoring the import of what was just said.

For the Submerged Lands Act did determine a political matter. It was passed by Congress and signed by the President and is the determination by b*oth political branches* which is binding upon the courts so far as it is legal.

In the appendix to the brief on page 167 the Government quotes a portion of the Submerged Lands Act, thus:

> "SEC. 4 (43 U. S. C. (1952 ed.) Supp. III, 1312). SEAWARD BOUNDARIES . . . Any State admited subsequent to the formation of the Union which has not already done so may extend its seaward boundaries to a line three geographical miles distant from its coast . . . Any claim heretofore or hereafter asserted either by constitutional provision, statute, or otherwise, indicating the intent of a State so to extend its boundaries is hereby approved and confirmed, without prejudice to its claim, if any it has, that its boundaries extend beyond that line. Nothing in this section is to be construed as questioning or in any manner prejudicing the existence of any State's seaward boundary beyond three geographical miles if it

was so provided by its constitution or laws prior to or at the time such State became a member of the Union, or if it has been heretofore approved by Congress.

"SEC. 9 (43 U. S. C. (1952 ed.) Supp. III, 1302). Nothing in this Act shall be deemed to affect in any wise the rights of the United States to the natural resources of that portion of the subsoil and seabed of the Continental Shelf lying seaward and outside of the area of lands beneath navigable waters, as defined in Section 2 hereof, all of which natural resources appertain to the United States, and the jurisdiction and control of which by the United States is hereby confirmed."

The *political branches* of the government thus recognize that a state's seaward boundary could be beyond three geographical miles, if so previously approved by Congress or if it so existed when the state entered the Union. (See page 3 of the Government's brief)

Since the state boundary cannot be farther seaward than the national boundary, this is an absolute statement by the political branches of the Government that the national boundary extended farther seaward than three miles when the states entered the union.

Nothing to the contrary which may have been said by a single member of the Government can override this clear and deliberate determination by both political branches of the government made for this issue specifically. This is so whether it be the self serving letter of June 15, 1956 from Mr. John Foster

Dulles to Mr. Brownell wherein the writer undertakes to decide this case for the court, or whether it be from any one else at any earlier time and directed to a different problem elsewhere and related here, if at all, only by analogy.

The boundary remains to be judicially determined.

There remains also for judicial determination the validity of the congressional limitations of three leagues.

The Congress knew the content of the Enabling Act and of the Act of Admission, and that the 1812 Constitution of Louisiana contains the same definition of the limits of the state.

The Congress also knew that this Honorable Court had held three times that there had been no *express* declaration by the Federal Government that any of the states owned the submerged lands off their coasts.

Nevertheless, the Congress having supplied the political determination as to the outer national boundary which the court had found to be lacking and that the national boundary extended farther than three miles, specifically left for judicial determination and without "questioning or in any manner prejudicing" the *prior* existence of state boundaries beyond three miles.

All of this solemn procedure was meaningless entirely unless it meant, as we say it does, that this Honorable Court should seek here the meaning of prior

enactments by the State of Louisiana and by the federal Congress.

The Act admitting Louisiana to the Union included "all islands within three leagues of the coast." The government says in its brief that this "does not appear to mean 'including all waters and submerged lands within three leagues of the coast'."

The case of *Louisiana vs. Mississippi* (202 U. S. 1, 50 L.Ed. 913) clearly shows that the description of the boundaries of Louisiana in the Act of admission was intended to include all submerged lands and waters, as well as all islands, within three leagues of the coast. The Louisiana case just cited points out the wording of the Act that the newly admitted State of Louisiana consists of that part of the territory of Louisiana. . . "contained within the following limits".

The following excerpts from the opinion in the case of Louisiana v. Mississippi support the point for which we contend:

> "In order to reach the open waters of the Gulf of Mexico the line ran through Lake Borgne. . . to get from Lake Borgne into the open water of the Gulf of Mexico beyond Chandeleur Island and around the Western boundary of Louisiana, it was necessary, as Louisiana contends, to follow the deep water channel. . . into the open Gulf." (202 U. S. 37, 50 L.Ed. 925)

> "The Eastern boundary thus described is a water boundary, and, in extending this water boundary to the open sea, or Gulf of Mexico, we

think it included the Rigolets and the deep water sailing Channel to get around to the Westward." (202 U. S. 43-44, 50 L.Ed. 928.)

"And when the Louisiana Act used the words: 'Thence bounded by the said Gulf to the place of beginning, including all islands within three leagues of the coast', the coast referred to is the whole coast of the State." (202 U.S. 46, 50 L.Ed. 929.)

"We are of the opinion that the peninsula of St. Bernard in its entirety belongs to Louisiana; that the Louisiana marshes at the eastern extremity thereof form part of the coast line of the State." (202 U. S. 47, 50 L. Ed. 930.)

The decree in the above quoted case reads, in part, as follows: "The State of Louisiana, complainent, is entitled to a decree recognizing and declaring the real, certain, and true boundary. . . to be the deep water channel sailing line emerging from the most Eastern mouth of Pearl River into Lake Borgne, extending through the Northeast corner of Lake Borgne. . . to the Gulf of Mexico, as delineated on the following map made up of the parts of charts number 190 and 191 of the U. S. Coast and Geodetic Survey." (202 U. S. 58, 50 L. Ed. 934.)

These maps referred to in the decree, and other maps published as a part of the courts opinion show a water boundary around the entire coast of Louisiana which includes islands, submerged lands, and waters withing three leagues of the entire coast of the State.

The Government is hard pressed to find some way of arguing that the submerged lands connecting the mainland with the islands within three leagues of the coast does not belong to Louisiana. It seeks to find an analogy by saying that though the United States received by the 1783 Treaty of Paris islands within 20 leagues of the shores of the United States. ". . . That has never been understood as meaning that the boundary of the United States was a line twenty leagues from shore in the sea; on the contrary, the United States has consistently taken the position that its boundary in the sea is three nautical miles, or one league, from the shore."

If the United States took the position that its boundary was only three nautical miles from the shore in the Gulf of Mexico this would be analagous. And, this is what the court thought when these cases were lost here. But since then the *political branches* of the government have *unmistakably determined* that the national boundary in the Gulf of Mexico is at least three leagues from the coast and the court, as the government says, is bound by that. We think this court so understood, in denying a writ of certiorari in the *Fontenot Case*, and we hope for an affirmative declaration to that effect now.

In 1812 no one was extracting oil and gas from the seabed. No need for precise and express statements of the sort now essential were then needed. But ever since 1812 to the knowledge of the federal government Louisiana Citizens have taken oysters from the sea-

bed, have been held amenable to the laws of Louisiana on the islands within three leagues of our coast and in going to and fro.

No conceivable reason has been, or we think could be, advanced why the federal government by the Enabling Act intended and could have intended to retain the seabed between the islands and the mainland and we submit that it did not do so.

As will be shown in the following section of this brief the statement made by the Secretary of State for the purpose of deciding this controversy, and the statements made by former Secretaries that the United States has consistently and uniformly maintained that its boundaries extend only three miles into the sea are not correct statements of fact or policy. The Court, in line with its prior decisions on the subject, should therefore disregard these statements.

The statement of the Secretary of State that the seaward boundaries of the United States are now only three miles offshore assumes that the Court cannot read and interpret the Outer Continental Shelf Lands Act which specifically extends federal jurisdiction, control and power of disposition seaward to the edge of the Continental Shelf. There is no provision in the Constitution or the laws of the nation which confers on the Department of State the power to interpret and conclusively decide the meaning of this Act, or any other Acts of Congress, relating to the extent of the sovereignty of the United States and the separate States of the Union. The determination of

national and State boundaries is the function of Congress acting within Constitutional limitations. The duty of interpreting the acts of congress is committed to the courts and not to the Executive Department of the government.

IV

THE UNITED STATES HAS CONSISTENTLY RECOGNIZED AND APPROVED A THREE LEAGUE BOUNDARY IN THE GULF OF MEXICO UNTIL THE LIMIT WAS DECLARED TO EXTEND TO THE EDGE OF THE CONTINENTAL SHELF IN 1953.

The fourth defense set forth in Louisiana's answer, pages 21-23, sets forth various treaties and Acts of Congress approving a three league boundary in the Gulf of Mexico. Plaintiff's brief does not set forth any acts of congress or treaties which declare that the marginal belt is less than three leagues in width. However, on page 19 of the government brief the statement is made that the United States has never recognized that States or Nations bordering on the Gulf of Mexico have boundaries extending three leagues therein. This subject is completely covered in our original brief beginning at page 96 and ending at page 106, and that argument need not be repeated here. However, the State does desire to answer specific statements made in the Plaintiff's brief regarding the purpose and effect of the various laws and treaties made

by the United States with reference to its boundary in the Gulf of Mexico.

On page 19 of the government's brief the statement is made that our diplomatic recognition of the Republic of Texas was not a recognition of the territorial boundary which it claimed, including a boundary three leagues in the Gulf, and that our annexation of Texas reserved all questions of boundary. This is not an accurate statement of the situation. The Joint Resolution of Congress of March, 1845 provided for the annexation of Texas to the United States and stated "that Congress doth consent that the territory properly included within, and rightfully belonging to the Republic of Texas, may be erected into a new State, to be called the State of Texas; . . . in order that the same may be admitted as one of the States of this Union." (4 Miller's Treaties, 689.)

The second paragraph of the Resolution for the annexation of Texas stated that the State was to be formed "subject to the adjustment by this government of all questions of boundary that may arise with other governments." (4 Miller's Treaties, 689.) This is the only provision relating to the boundary of Texas in the Resolution of Annexation. Prior to this date the boundary between Texas and the United States had been fixed by a Convention for the marking of the boundary on April 25, 1838 (8 Stat. 511, 4 Miller's Treaties, 133). In the negotiation of this Treaty both of the governments recognized the boundaries fixed by the earlier treaties of the United States with Spain

in 1819 and with Mexico in 1828 as binding, and the boundary was agreed upon as beginning at the Mouth of the Sabine River three leagues from land and running west along the Gulf three leagues from land to the Mouth of the Rio Grande. (See notes of the Department of State, 4 Miller's Treaties 135, 136.) There can be no doubt that the United States recognized the boundaries of Texas in the Gulf of Mexico as extending three leagues seaward at that time.

This Court recognized the fact that the Texas boundaries extended three leagues into the Gulf of Mexico when Texas was annexed to the United States in 1845. In the case of *United States v. Texas*, 339 U.S. 707, 717, 94 L.Ed. 1221, 1227, the Court, after setting forth Texas history relating to its three league boundary in the sea, stated:

> ". . . Texas prior to her admission was a Republic. We assume that as a Republic she had not only full sovereignty over the marginal sea but ownership of it, of the land underlying it, and of all the riches which it held. In other words we assume that it then had the dominium and imperium in and over this belt which the United States now claims . . ."

The assumption stated by the Court was necessarily made from the facts recited in the opinion.

Plaintiff states on page 19 of its brief that the Treaty of Guadalupe Hidalgo of 1848 and the Gadsden Treaty of 1853 extending the boundary between the United States and Mexico three leagues into the

Gulf were only to prevent smuggling at that point, and did not recognize any right to a three league maritime belt. This is a distortion of the meaning of the language of these treaties which cannot be justified by the words of the treaties themselves. Nor does it make sense to say that these treaties "were only *to prevent smuggling at that point.*" The boundary did not happen to be a point. Article V of the Treaty of Guadalupe Hidalgo, (9 Stat. 942-3, 5 Miller's Treaties 207, 213) describes a *boundary line* between the two Republics commencing in the Gulf of Mexico three leagues from land and ending in the Pacific Ocean almost 2000 miles away. Nothing is said in the Treaty with regard to smuggling at any point nor is there any indication that the three league boundary seaward into the Gulf of Mexico should be regarded as surplusage.

Likewise in the Gadsden Treaty of 1853 (10 Stat. 1031, 6 Miller's Treaties 293) a boundary between the two Republics is described as beginning in the Gulf of Mexico three leagues from land and, with certain additional territory added, following generally the line described in the Treaty of Guadalupe Hidalgo. In the notes to the above Treaty found in Volume 6 of Miller's Treaties various boundary maps that were authenticated pursuant to the provisions of the Treaty are described. Map No. 1 is thus described on page 398:

"Map 1 covers the boundary from a point

in the Gulf of Mexico, 'three leagues from land, opposite the mouth of the Rio Grande, otherwise called Rio Bravo del Norte . . . from thence, up the middle of that river, following the deepest channel', to a point above Brownsville, Texas. It is entitled, 'Boundary Between The United States And Mexico Agreed upon by the Joint Commission under the treaty of Guadalupe Hidalgo; Surveyed in 1853 under the direction of Bvt. Major W. H. Emory, Corps of Topographical Engineers, Chief Astronomer and Surveyor; by Mr. Cha Radziminski, Prin. Ass. Surveyor, and Mr. Arthur Schott, Ass. Surveyor'."

In the Map Appendix filed with it's original brief, Louisiana submits two official maps showing the International Boundary between the United States and Mexico three leagues seaward in the Gulf of Mexico.

Map No. 6, prepared by the Consulting Engineers of the International Boundary Commission, United States and Mexico, shows the three league boundary in the sea, and is entitled: "Sheet No. 7, Topographical Map of the Rio Grande from Roma to the Gulf of Mexico showing Boundary between the United States and Mexico."

Map No. 7 is described as follows:

"REDUCED SCALE REPRODUCTION OF MAP SHEETS 29 and 30 OF "Department of State,— PROCEEDINGS OF THE INTERNATIONAL BOUNDARY COMMISSION, UNITED STATES AND MEXICO — Joint Report of the Consulting Engineers on Field Operations of 1910-

1911. American Section." (Department of State, 1913).

This map also shows a line into the Gulf which has the inscription: "International Boundary Begins Three Leagues from land and opposite the Mouth of the Rio Grande." Both of these maps show the end of this surveyed three league boundary line to be in water 27.3 meters deep.

Nothing in the Treaty or in the notes to the Treaty indicate that the boundary between the two Republics was established merely to prevent smuggling at a certain point, and there is nothing to negative the existence of a three league maritime belt which is necessarily implied in the language of the Treaty.

On page 47 of the government brief a letter from Secretary of State Hamilton Fish is quoted wherein he refers to the Treaty of Guadalupe Hidalgo and states "that it was probably suggested" by the Act of Congress authorizing the revenue-cutters of the United States to board vessels any where within four leagues of their coast. The Secretary then states that the Treaty was probably designed "for the same purpose, that of preventing smuggling."

Even if the purpose of the treaty were to prevent smuggling, the fact remains that the extensive boundary fixed for that purpose was a boundary extending three leagues into the Gulf, which necessarily meant that the territories of the two nations extended seaward that distance. All boundaries, whether public

or private, are fixed with an idea of maintaining territorial integrity and preventing trespassing. Smuggling is an act of trespass and the fixing of a boundary to prevent it does not alter the fact that a territorial boundary has been fixed for all purposes.

Secretary of State Fish in this communication was merely temporizing with the British Foreign Minister, and his speculation as to his probable purpose of the Treaty of Guadalupe Hidalgo can be in no sense be considered as an executive determination. As pointed out hereinabove the Secretary of State is not the sole judge of the meaning of the language of treaties. This particular Secretary came along nearly 40 years after the treaty referred to had been made. In any event the Court is the proper arm of the government to determine the meaning of words and phrases used in treaties made by the President with the concurrence of the United States Senate. As stated in *Jones v. Meehan*, 175 U.S. 1, 32, 44 L.Ed. 49, 62, the Court said:

> ". . . The construction of treaties is the peculiar province of the judiciary; and, except in cases purely political, Congress has no constitutional power to settle the rights under a treaty, or to affect titles already granted by the treaty itself. Wilson v. Wall, 6 Wall. 83, 89, 18 L.Ed. 727, 729; Reichart v. Felps, 6 Wall. 160, 18 L. Ed. 849; Smith v. Stevens, 10 Wall. 321, 327, 19 L.Ed. 933, 935; Holden v. Joy, 17 Wall. 211, 247, 21 L.Ed. 523, 535."

In the light of the authorities set forth hereinabove and in part III of this brief the Court in construing treaties entered into by the United States is not bound by the diplomatic correspondence of the Department of State. It would be an anomaly to permit an appointed official to distort the language of treaties and statutes passed by the Congress. Since the foreign affairs of the nation are under the jurisdiction of both the Legislative and the Executive Departments of the government, neither should be permitted to effectively contradict the acts of the other, and statutes as well as treaties should be construed in accordance with the ordinary and accepted meaning of the words used.

In the case of *The Amiable Isabella*, 6 Wheat. 1, 72, 5 L.Ed. 191, 208, this Court emphasized the fact that treaties must be construed in accordance with their language, and not otherwise, saying:

> ". . . This court is bound to give effect to the stipulations of the treaty in the manner and to the extent which the parties have declared, and not otherwise. We are not at liberty to dispense with any of the conditions or requirements of the treaty, or to take away any qualification or integral part of any stipulation, upon any notion of equity or general convenience, or substantial justice. The terms which the parties have chosen to fix the forms which they have prescribed, and the circumstances under which they are to have operation, rest in the exclusive discretion of the contracting parties . . ."

Similarly, in *Sullivan v. Kidd*, 254 U. S. 433, 439, 65 L.Ed. 344, 347, your Honors held:

> "Writers of authority agree that treaties are to be interpreted upon the principles which govern the interpretation of contracts in writing between individuals, and are to be executed in the utmost good faith, with a view to making effective the purposes of the high contracting parties; that all parts of a treaty are to receive a reasonable construction, with a view to giving a fair operation to the whole. 5 Moore, International Law Dig. 249 . . ."

In the interpretation of contracts this Court has many times held that the words in a statute should be given their common meaning and that common terms in a statute are presumed to have been used in their common sense.[9]

Since the word "boundary" was repeatedly used in the treaties made by the United States with Spain, Mexico and Texas, and the line shown on the surveys made pursuant to such treaties are described as boundary lines, the term "boundary" should be used in its generally accepted sense. The word "boundary" is thus defined in Bouvier's Law Dictionary (3rd Rev. p. 384):

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[9]Wolford Realty Co. v. Rose, 286 U.S. 319, 76 L.Ed. 1128; Old Colony R. Co. v. Commissioner of Internal Rev., 284 U.S. 552, 76 L.Ed. 484;
Columbia Water Power Co. v. Columbia Elec St. Ry Co., 172 U.S. 475, 43 L.Ed. 521.

"*Boundary.* Any separation, natural or artificial, which marks the confines or line of two contiguous estates. 3 Toullier, n. 171.

The term is applied to include the objects placed or existing at the angles of the bounding lines, as well as those which extend along the lines of separation."

A similar definition is contained in Webster's International Dictionary (2nd ed., p. 317) where it is referred to as "that which marks a bound, as of a territory."[10]

It does not require a grade school education to know that boundaries are lines which mark the limit and the extent of any piece of ground or territory. The word is therefore a very common word. However, United States counsel on page 97 of his brief says that Congress has used the word boundary "as a term of art in defining the extent of the rights granted to the States." There is nothing in any of the treaties which fix the United States boundaries three leagues in the Gulf, nor is there anything in the diplomatic correspondence concerning these treaties which suggests that the word "boundary" is a term of art or that it has any meaning other than that of the commonly accepted definition of the term. Opposing counsel gives no authority for his statement that this word is a term of art other than his own *ipse dixit.* The only occasion that we know of where a boundary is

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[10]See also: 5 Words and Phrases (Perm. ed.) 729.

a term of art is in the British game of Cricket where "a hit to the boundary" counts a definite number of runs. Even in the game of Cricket the boundary is a line which encloses a definite plot of ground on which the players sport.

Without laboring the subject too much we might refer to the statement in Words and Phrases (Perm. ed.), page 729:

> "'Boundary' is a word having no technical signification."

There is therefore no need to look for some curious or narrow definition of the term. As this Court said in *Old Colony R. Co. v. Commissioner of Internal Revenue*, 284 U. S. 552, 560, 76 L.Ed. 484, 489:

> ". . .As was said in Lynch v. Alworth-Stephens Co., 267 U. S. 364, 370, 69 L.ED. 660, 662, 45 S. Ct. 274, 'the plain, obvious and rational meaning of a statute is always to be preferred to any curious, narrow, hidden sense that nothing but the exigency of a hard case and ingenuity and study of an acute and powerful intellect would discover' . . ."

Louisiana in its answer and in its original brief refers to the Act of June 25, 1868, 15 Stat. 73, readmitting Florida to the Union, and approving Florida's boundaries five leagues in the Gulf. (This was subsequently reduced to three leagues in the Constitution of 1885) However, plaintiff's brief on page 19 says this was not an approval of Florida's territorial limits but was only a determination that Florida had estab-

lished a Republican form of government. Congress and this Court have both found to the contrary. By an Act of June 20, 1906, 34 Stat. 313, Congress passed a law regulating the taking of sponges and this act was interpreted by this Court in the case of *Abbey Dodge v. U. S.*, 223 U. S. 166, 56 L.Ed. 390. In that case the defendant was charged with illegally taking sponges from the waters of the Gulf of Mexico and the straits of Florida. After holding that the States own their territorial waters and the fish in them, this Court said (223 U. S. 177):

> "By the interpretation which we have given the statute, its operation is confined to the landing of sponges taken outside of the territorial limits of a State, and the libel does not so charge ---that is, its averments do not negative the fact that the sponges may have been taken from waters within the territorial limits of a State. . ."

The Attorney General of the United States had argued that because the United States has the right to regulate foreign commerce and since the sponge beds were from 15 to 60 or 65 miles offshore the United States had jurisdiction thereof (223 U. S. 177). It is therefore evident that the Court in referring to the territorial limits of the State was referring to its limits in the Gulf of Mexico.

Congress recognized the fact that Florida had territorial limits extending into the Gulf of Mexico and must have known what these limits were when it passed the Act of August 15, 1914, 38 Stat. 692, 16

U. S. C. 781, regarding the taking of sponges in the waters of the Gulf of Mexico or the Straits of Florida. Section 1 of that Act reads as follows:

> § 781. *Taking or catching, in waters of Gulf or Straits of Florida, commercial sponges of less than prescribed size, and landing or possession of same:*
>
> It is unlawful for any citizen of the United States, or person owing duty of obedience to the laws of the United States, or any boat or vessel of the United States, or person belonging to or on any such boat or vessel, to take or catch, by any means or method, in the waters of the Gulf of Mexico or the Straits of Florida outside of State territorial limits, any commercial sponges measuring when wet less than five inches in their maximum diameter, or for any person or vessel to land, deliver, cure, offer for sale, or have in possession at any port or place in the United States, or on any boat or vessel of the United States, any such commercial sponges. Aug. 15, 1914, c. 253, § 1, 38 Stat. 692."

In thus limiting the jurisdiction of Congress to an area beyond the territorial limits of Florida in the Gulf of Mexico Congress has undoubtedly recognized the well known fact that Florida boundaries do extend three leagues into the Gulf of Mexico.

The Congressional Committees that recommended passage of the Submerged Lands Act were not ignorant of the fact that the boundary of Texas and Florida both extend three leagues into the Gulf of

Mexico. House Report No. 215, 83rd Congress, 1st Session makes the following statement on this subject, pages 43 and 44:

> ". .In 1868 Congress approved the Constitution of Florida, in which its boundaries were defined as extending 3 marine leagues seaward and a like distance into the Gulf of Mexico. Texas' boundary was fixed 3 marine leagues into the Gulf of Mexico at the time it was admitted to the Union in 1845 by the annexation agreement . . .
>
> These affirmative acts by the Congress, and its failure to deny State ownership at any time in our history, establish conclusively that the congressional policy, at least since 1850, consistently has been to recognize State ownership of the lands in question."

The United States brief on page 53 refers to a Mexican decree of August 30, 1935 which is the basis for a protest by the Department of State against Mexico's claim to this maritime belt. Plaintiff's counsel does not set forth the rest of the diplomatic correspondence on this subject. This correspondence terminated in a letter from the Department of State to the Mexican foreign office on May 23, 1936. In this letter the United States admitted that Mexican territorial waters extended three leagues from land in the Gulf of Mexico by virtue of the terms of the Treaty of Guadalupe Hidalgo, and limited its protest to that portion of the coasts of Mexico which bordered on the Pacific Ocean. The following paragraph is taken

from the reply of the Department of State of the United States. (I Hackworth, 640, 641):

"The treaty provisions (art. V of the treaty of 1848) in question read as follows:

'The dividing line between the two Republics shall begin in the Gulf of Mexico, three leagues from land at the mouth of the Rio Grande. . .'

The Foreign Office has not taken into account the remaining words of the paragraph from which the quotation is taken, which words delimit the boundary line between its eastern end in the Gulf of Mexico and its western end which is said to be 'the Pacific Ocean.' It will be observed that the Western limit of the boundary line is not stated to be 'three leagues from land' . . .

Wholly aside from the question of the boundary line between the two countries, there remains to be considered the total great extent of the Mexican coast and the bordering territorial waters. To say that because the United States agreed that in one area, so far as the United States was concerned, Mexican territorial waters extended three leagues from land, therefore Mexico was entitled to claim such an extent of territorial waters adjacent to her entire coast line is an unwarranted deduction from the terms of Article V of the Treaty of 1848."

The entire diplomatic correspondence on this subject appears in Hackworth's Digest of International Law, Volume I, pages 639-642.

V

SUBMERGED LANDS WERE ATTRIBUTES OF SOVEREIGNTY AND PASSED TO THE STATES UPON ADMISSION. SPAIN AND FRANCE HAVE ALWAYS CLAIMED OWNERSHIP OF TERRITORIAL WATERS AND SUBMERGED LANDS INCLUDING THOSE BORDERING THE LOUISIANA TERRITORY IN THE GULF OF MEXICO

In its second defense in its answer, pages 13-17, Louisiana claims historic boundaries extending to the 27th parallel of latitude. This boundary is based upon the Proclamation of LaSalle of April 9, 1682 wherein he took possession of Louisiana, ". . . the seas, harbors, ports, bays, adjacent straits" as far as the Mouth of the Mississippi River ". . . . in the sea, or Gulf of Mexico, about the 27th degree of the elevation of the North Pole." Government counsel on pages 111-114 says that LaSalle was in error in that he believed that the Mouth of the Mississippi River was at the 27th parallel of latitude, and that LaSalle only intended to claim the territory as far as the Mouth of the River. In support of this statement he refers to the proces'-verbal of the Notary who reported the expedition and who stated in his report that the place where LaSalle erected a column and a cross and laid claim to Louisiana was at about the 27th parallel of latitude. From this report of the Notary plaintiff's counsel says that LaSalle mistakenly believed that he was then at about the 27th parallel of latitude.

Plaintiff's counsel is the first person in 275 years, to the day, to suggest that LaSalle's claim to the Louisiana territory to the 27th parallel of latitude was made in error. As pointed out in our original brief, John Quincy Adams, Secretary of State on March 12, 1818, addressed a letter to the Spanish Minister De Onis wherein he stated that of all enterprises of discovery on this continent, none "is more certain, authentic, and particular than those of LaSalle." It is evident that it was the Notary and not LaSalle who was in error, because LaSalle took possession not only of the province of Louisiana but of "the seas . . . as far as . . . the 27th degree of the elevation of the North Pole, and also to the mouth of the River of Palms." Old maps show that the River of Palms emptied into Palm Sound, which is now Sarasota Bay, and is located at the 27th parallel. Current maps show the Mouth of the Mississippi River at the 29th parallel of latitude, and in view of the ease of determining latitude by means of the quadrant, even in olden times, it cannot be reasonably concluded that LaSalle would have committed an error of 2 degrees in the reading of his quadrant.

Beginning at page 111 of Plaintiff's brief there is an argument that neither France nor Spain claimed the territorial jurisdiction seaward of the shore of Louisiana. Plaintiff does not cite any treaties, laws or other documents whereby either France or Spain disclaimed any title or right to territorial waters in the Gulf of Mexico and none of the treaties or diplomatic

correspondence quoted in the brief have this effect. On the contrary Spain and France have both claimed ownership of territorial waters both on the European Continent and in the waters bordering their possessions in America, including the Gulf of Mexico.

Plaintiff's statement that France has never claimed territorial jurisdiction seaward of the shore of Louisiana simply ignores the facts of history and of international law. That nation has been a party to many treaties with other world powers wherein it has recognized territorial jurisdiction in America not less than three leagues and on some coasts to the extent of thirty leagues in the sea. These treaties are set forth in Section F of the Appendix filed with Louisiana's brief. These treaties include the following:

Treaty of Utrecht, March 4, 1713 between Great Britain, France, Spain, and other European nations (Journal of the House of Commons, 1713, pages 229, 230)

Preliminary Articles of Peace signed at Fontainebleau, November 3, 1762 by Great Britain, France and Spain (3 Davenport, European Treaties 227-231)

Definitive Treaty of Peace signed at Paris, February 10, 1763 between Great Britain, Spain and France, (Journal of the House of Commons, Vol 29 p. 364-367)

Definitive Treaty of Peace and Friendship between Britain and France at Versailles September 3, 1783, (Journal of the House of Commons, Vol. 29, p. 588-594)

Aside from the Proclamation of LaSalle in 1682 these treaties, executed and observed over a long period of time, establish a definite policy of France and the other world powers of the 18th century to recognize and approve the ownership of territorial waters to the extent of thirty leagues and not less than three leagues offshore. Treaties, custom, and usage are the foundations of international law. The Territory of Louisiana is no exception to the rule."[11]

French Juriconsults at the time of, and prior to the Louisiana Purchase, all asserted the right of France to territorial waters on the Continent and in America. See Section G of Louisiana's Appendix quoting:

Vattel, "*Le Droit des Gens*" (1758) Vol. I, p. 247, 249;

De Rayneval, "*Institutions du Droit de la Nature et des Gens*" (1803) p. 161;

G. Masse' "*Le Droit Commercial dans Ses Rupports avec le Droit des Gens*" (1844) Vol. I p. 114-115.

On October 31, 1563, Phillip II of Spain promulgated an Ordinance in which he asserted territorial jurisdiction "within sight of land or port" on the shores of Spain and its possessions. See Ernest Nys "Le Droit International" Vol. I, p. 542. This Ordinance

[11]The Paquete Habana, 175 U.S. 677, 44 L.Ed. 320
Hilton v. Guyot, 159 U.S. 113, 40 L.Ed. 95
U. S. v. de la Maza Arredondo, 6 Pet. 691, 8 L.Ed. 547
The Antelope, 10 Wheat. 66, 6 L.Ed. 268

is referred to by the Spanish Ambassador De Onis in a communication to the Department of State at Washington under date of January 5, 1818, wherein he said: (Am. State Papers, Vol IV, p. 455)

> ". . . in pursuance of a royal order issued for that purpose . . . Spain was established as the mistress and possessor of all that coast and territory, and she never permitted foreigners to enter the Gulf of Mexico, nor any of the territories lying around it, having repeated the royal order by which she then enforced the said prohibition, and charged the Spanish viceroys and governors with the most strict observance of the same."

In this same document the Spanish Minister after describing the discoveries and conquests of the Spanish Crown in North and Central America goes on to say (Am. State Papers, Vol IV, p. 456):

> "These dominions and settlements of the Crown of Spain were connected with those which we had on the Gulf of Mexico, that is to say, with those of Florida and the coasts of the province of Texas, which, being on the same Gulf, must be acknowledged to belong to Spain, since the whole circumference of the Gulf was hers; which property, incontestably acquired, she had constantly maintained among her possessions, not because she occupied it throughout its whole extent, which was impossible, but on the principle generally recognized, that the property of a lake or narrow sea, and that of a country, however extensive, provided no other Power is already established in the interior, is acquired by the occupation of its principal points."

A Treaty between Spain and Great Britain in 1670 (I Ferrater 327-328) specifically provided in Article 15 that the parties recognized the rights and dominions of each other in the American seas and waters.[12]

Again in 1742 Spain in a Treaty with Denmark, excepted "the countries and seas of the Spanish Indies" from the general provision establishing free trade between the contracting parties (I Ferrater 89). Spain used the words "Indies" to apply to America and especially the Spanish dominion there (Shepherd's Historical Atlas, 1956, p. 107-8).

We pointed out in our original brief the fact that Spain recognized the existence of territorial waters on the continent of North America in the preliminary Treaty between Great Britain, France and Spain of November 3, 1762 as well as in the Treaty of Paris of February 10, 1763 (I Marten's 92, 108). Since in these treaties Great Britain's right to exclude France from fishing within three leagues of the Canadian coast in some places and up to thirty leagues in others, was thus recognized by Spain, it is proper to treat this as a recognition by the latter of an exclusive right of a riparian State to the territorial seas on the North American Continent.

In a Treaty of Peace and Amity between Spain and Tripoli, September 10, 1784 (I Ferrater 488-489) Article 4 prohibited the capture of any vessel within ten leagues "from coasts of the dominions of Spain."

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[12] Esteban de Ferrater, "Codigo de Derecho Internacional", (Barcelona, 1846).

The Treaty between Spain and Great Britain of October 28, 1790 (I Ferrater 332-333) has already been referred to in our original brief wherein Britain and Spain recognized their respective rights to territorial waters within the space of ten leagues from any part of the coast already occupied by the other in the Pacific Ocean and the South seas on the American coasts.

In the Treaty between Spain and the United States of October 27, 1795 (8 Stat. 138, 2 Miller's Treaties 318) provision is made in Article 6 whereby "Each party shall endeavor by all means in their power to protect and defend all vessels and other effects belonging to the Citizens or Subjects of the other, which shall be within the extent of their jurisdiction by sea or by land."

While this Treaty did not define the extent of the territorial seas the United States and Spain both recognized that each possessed rights of dominion and ownership in the marginal seas.

On January 16, 1817 Spain protested the seizure of a Spanish ship "within sight of the Balize" which was then a Gulf port at the Mouth of the Mississippi River. The communication stated that this capture by a pirate vessel was "manifestly in violation of the territory of the United States" (Letter from Spanish minister Don Louis De Onis to Department of State, Janauary 16, 1817, 5 British State Papers 368-71).

The domestic laws of Spain have always recogniz-

ed and regulated the maritime belt both in continental Spain and in the Spanish dominions in America. The "Recopilacion de Indias" (1680) contained minutely detailed regulations for the establishment and conduct of sedentary pearl fisheries in the new world. This was an assertion of the territorial jurisdiction of Spain to the natural resources of the bed of the sea. It will be remembered that the British Commonwealths have from time immemorial claimed such rights to natural resources in the bed of the sea.

Spanish authorities on International Law have asserted the rights of Spain in the territorial seas. Esteban de Ferrater, in his Code of International Law, Vol. II, page 151 says:

> "The sea belongs to the State which it washes only so far as a distance of three leagues measured by a line parallel to the coast."

Abreu y Bertadano, in his "Tratado Juridico-Politico Sobre Presas de Mer," (1746), says with reference to the open sea (pages 68-69):

> "But since the subjection of these seas is repugnant to the Law of Nations and to their own nature, our only question concerns the Adjacent Seas, which, without any doubt it cannot be denied, are like the ports which they join, equally subject to dominion.
>
> Assuming that; I believe that the Prince which is the Sovereign of a region, province or island is also sovereign (just as he is of the land territory of a section of the sea which washes and

surrounds it for a space of 100 miles seaward. This is an infallible tradition among the jurists of all nations."

As an authority for this last statement he cites the Italian author, Crespi. He later defends this broad extent of territorial waters as against the then existing British claim of only two leagues on the ground that the narrowness of the channels around England prevents broad claims which would interfere with the rights of other nations and with the normal course of navigation, whereas Spain is not, geographically speaking, faced with the same difficulty (page 78-81).

Don Antonio Riquelme, who published his treatise *Elementos de Derecho Publico Internacional* in 1849 while he was Chief of Section in the Spanish Ministry of State, represented the official view of the Government of Spain. This is a permissible inference from the position he occupied in that government. His work was published with royal permission. From our point of view, his is therefore the most authoritative source among these later publications. In Volume I, page 23, he says:

"By the term territory belonging to a State is understood not only its land territory, but also its .... littoral seas."

The author further states on page 200 of this work:

"The rule recognized by the law of nations for determining the legal status of the littoral

seas is based on the idea that all is lawful for the lord of the coasts which his own preservation demands . . ."

He again states on page 213:

"Therefore, the opinion of the best publicists who have written on this subject is that each State, according to the physical characteristics of its adjacent seas, the configuration of its coasts, its real means of defense and the kind of dangers to which it is exposed, may determine with the knowledge of other nations, how far the action of its coast guard and the exercise of its jurisdiction shall extend; and that this maritime limit thus established, must be respected if freedom of navigation is not thereby hindered.

"The maritime limits of Spain have been fixed at 6 miles since 1760 by the royal decree of December 17 of that year, confirmed by royal resolution of May 1, 1775, and by Article 15 of the royal decree of May 3, 1830. The royal orders which determine the extent of the sea in which the vigilance of the coast guard can be exercised, and the kind of ships which may be the object of this policing and the circumstances under which such precautions must be taken, have been consented to by all the maritime powers, because no protest or claim has been presented concerning them."

The foregoing statement regarding the maritime limits of Spain having been fixed at six miles apparently refers to the territory of Spain on the contnent of Europe.

It therefore appears that Spain has always claim-

ed territorial waters in the American dominions and that prior to the Louisiana Purchase in 1803 a limit of ten leagues was claimed.

In view of these claims to territorial waters asserted and approved by France and Spain during the eighteenth century it does not comport with reason to say that either of these nations intended that their claims to the Louisiana Territory stopped at the shore.

VI

LOUISIANA'S CONSTITUTIONAL RIGHTS ARE INVOLVED. THE UNITED STATES CANNOT GAIN TERRITORY CONTRARY TO ITS OBLIGATIONS AS TRUSTEE.

The extent to which Louisiana's Constitutional Rights are involved, by the claim of the United States here, is fully discussed on pages 47 to 64 of its original brief on the Motion for Judgment. We have shown there, and hereinabove, that the United States acquired the Louisiana Territory as well as the bordering seas *in trust* for the State of Louisiana and other States to be formed therefrom.[13]

We have also cited numerous decisions of this Court to the effect that ownership of marginal waters

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[13] Art. III Treaty of Paris, 8 Stat. 200, 2 Miller's Treaties 498

Pollard v. Hagan, 44 U.S. (3 How.) 212, 11 L.Ed. 565

Weber v. Harbor Commissioners, 85 U.S. (18 Wall.) 57, 21 L.Ed. 798

Hardin v. Jordan, 140 U.S. 371, 381, 35 L.Ed. 428, 433.

of the sea belong to the coastal States of the United States as an incident of their sovereignty.[14]

Since the United States acquired both the land and the seas in trust for the State it cannot gain territory in the Gulf of Mexico by substraction from the sovereignty of the State. Because of the trust relation it cannot take away from the State sovereignty over the submerged lands which passed to the State as an incident of State sovereignty and as one of the properties of the trust.

A trustee is prohibited from using the advantage of its position to gain any benefit for itself at the expense of the cestui que trust of placing itself in any position where self-interest will, or may, conflict with its duties as trustee. Nor can a trustee compete with the beneficiary in the acquisition of property. The rule applies whether the trust be a public or a private one. The rule on this subject was stated in an early decision of this Court which has been consistently followed in later cases. The case of *Michoud v. Girod*, 4 How. 503, 555, 11 L.Ed. 1076, 1099 states the principle thus:

> "The general rule stands upon our great moral obligation to refrain from placing ourselves in relations which ordinarily excite a conflict between self-interest and integrity. It restrains all

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[14]Den v. Jersey Co., 15 How. 426, 432-3, 14 L.Ed. 757, 760-1;

Mass. v. New York, 271 U.S. 65, 89, 70 L.Ed. 838, 849; See also cases cited in Note 17, page 71 of Original Brief.

agents, public and private; but the value of the prohibition is most felt, and its application is more frequent, in the private relations in which the vendor and purchaser may stand towards each other. The disability to purchase is a consequence of that relation between them which imposes on the one a duty to protect the interest of the other, from the faithful discharge of which duty his own personal interest may withdraw him. . .It therefore prohibits a party from purchasing on his own account that which his duty or trust requires him to sell on account of another, and from purchasing on account of another that which he sells on his own account. . . In the case of Wormley v. Wormley (8 Wheat. 421) this Court declared that no rule is better settled than that a trustee cannot become the purchaser of the trust estate. . . ."[15]

Applying the principles of these cases to the present controversy, the United States cannot by limiting Louisiana's boundary at the time of its admission to the Union (if we assume that it did limit such boundary) gain sovereign ownership over submerged lands by means of a later extension of the national boundary. Such an extension of boundary can only be made "according to the principles of the federal constitu-

---

[15]See Also:

Magruder v. Drury, 235 U.S. 106, 119, 120, 59 L.Ed. 151, 156;

C. M. and St. P. Ry. Co. v. Des Moines Co., 254 U.S. 196, 220, 65 L.Ed. 219, 232.

tion" as provided in the third article of the Treaty of Cession with France.

It is true that a treaty can be abrogated by a subsequent act of Congress but vested rights cannot be taken away in that manner nor can trust obligations be extinguished. It must be remembered that treaties like the Louisiana Purchase create multi-partite obligations; namely obligations running in favor of the parties to the treaty, those in favor of the States to be formed, and those in favor of the inhabitants of the territory. The rights of France stipulated in the treaty are moral rather than legal obligations (*Edye v. Robertson*, 112 U. S. 580, 28 L.Ed. 798). The rights stipulated in favor of Louisiana and those running in favor of the inhabitants of the territory are legal rights protected by the Constitution. Termination or abrogation of a treaty does not divest vested rights (*Society v. New Haven*, 8 Wheat. 464; 5 L.Ed. 562).

Plaintiff's brief (page 99-100) states that the Treaty for the Louisiana Purchase ceased to operate when the State was admitted to the Union and cites *New Orleans v. De Armas*, 9 Pet. 224, 235, 9 L.Ed. 109, 113 on this proposition. The opinion and decree of the court does not go that far. All that was involved in that case was a question as to whether or not the federal courts had jurisdiction to decide a question as to the title to a lot of ground in New Orleans. The appellees claimed title under a Spanish grant which had been confirmed by a patent from the United

States. New Orleans claimed title by public use, and invoked the provisions of the Treaty with France which required that the inhabitants of the territory be admitted to the Union "to the enjoyment of all the rights, advantages, and immunities of citizens of the United States." The court held that this provision of the treaty had been discharged by the admission of the State to the Union, and further said: (9 Pet. 235)

> ". . . The right to bring questions of title decided in a State court before this tribunal, is not classed among these immunities. The inhabitants of Louisiana enjoy all the advantages of American citizens, in common with their brethren in their sister States, when their titles are decided by the tribunals of the State.
>
> . . . If in any case such jurisdiction could be supposed to be given, it might be where an act of Congress attempted to divest a title which was vested under the pre-existing government."

Neither this case nor any other case we have read holds that all obligations of a treaty cease to operate by the admission of a state to the Union.

VII

THE EQUAL FOOTING CLAUSE RELATES TO SOVEREIGNTY OVER SUBMERGED LANDS AND ENTITLES LOUISIANA TO EQUAL SOVEREIGNTY WITH OTHER GULF COASTAL STATES

In its fourth defense (Answer page 23) Louisiana avers that it is entitled to sovereignty over the submerged lands in the Gulf of Mexico on an equal footing with the States of Texas and Florida whose boundaries are recognized as three leagues seaward in the Gulf of Mexico, citing *U. S. v. Texas*, 339 U. S. 707, 94 L.Ed. 1221. Plaintiff's brief on page 20 and 150 states that Louisiana's claim to an equal footing with Florida and Texas is without legal foundation because both of these States entered the Union after Louisiana. Counsel cites no authority in support of his argument that equality in sovereign power of various States of the Union depends solely upon conditions existing as of the date of the admission of the State. In fact both reason and law would dictate the contrary.

In the Texas case this Court stated (339 U. S. 716):

> "The 'equal footing' clause had long been held to refer to political rights and to sovereignty."

The opinion then goes on to state:

"Yet the 'equal footing' clause has long been held to have a direct effect on certain property rights."

Of course, the property rights that the Court was referring to in that case were property rights to submerged lands in the Gulf of Mexico, which rights this Court has always said were "attributes of sovereignty" in the coastal States (See numerous cases cited in original brief page 71, footnote 17).

Other decisions of this Court indicate very clearly that the States of the Union are not only to be admitted on an equal footing in so far as their sovereign status is concerned, but are to be maintained on an equal footing. If this were not so the equal footing clause could be made meaningless. The whole theory of our Government rests upon the assumption that each one of the 48 states is to be of equal dignity in so far as its sovereign powers and perogatives are concerned. Thus in *Coyle v. Smith*, 221 U. S. 559, 566-567, 55 L.Ed. 853, 858, this Court said:

"But what is this power? It is not to admit political organizations which are less or greater, or different in dignity or power, from those political entities which constitute the Union. It is, as strongly put by counsel, a 'power to admit states.'

'This Union' was and is a union of states, equal in power, dignity, and authority, each competent to exert that residium of sovereignty not delegated to the United States by the Constitu-

tion itself. To maintain otherwise would be to say that the Union, through the power of Congress to admit new states, might come to be a union of states unequal in power, as including states whose powers were restricted only by the Constitution, with others whose powers had been further restricted by an act of Congress accepted as a condition of admission. . . ."

Later on in the opinion of this case the following statement is made (221 U. S. 570):

"So far as this court has found occasion to advert to the effect of enabling acts as affirmative legislation affecting the power of new states after admission, there is to be found no sanction for the contention that any state may be deprived of any of the power constitutionally possessed by other states, as states, by reason of the terms in which the acts admitting them to the Union have been framed."

The Court in an earlier case made the statement that this equality of sovereign power not only comes into being upon the admission of a State into the Union but must *thereafter* be given force and effect. So in *Dick v. U. S.*, 208 U. S. 340, 353, 52 L.Ed. 520, 525, the Court held:

"A State, upon its admission into the Union, is thereafter upon an equal footing with every other State and has complete and full jurisdiction over all persons and things within its limits, except as it may be restrained by the provisions of the Federal Constitution or by its own Constitution."

Again in *Boyd v. State of Nebraska*, 143 U. S. 135, 170, 36 L. Ed. 103, 113, this principle is asserted:

> "Admission on an equal footing with the original States, in all respects whatever, involves equality of constitutional right and power, which cannot thereafterwards be controlled."

Attention is also directed to the following statement in the case of *Escanaba Transportation Co. v. Chicago*, 107 U. S. 678, 689, 27 L.Ed. 442, 447:

> "Equality of constitutional right and power is the condition of all the States of the Union, old and new."

It therefore follows that Louisiana has the same constitutional rights and the same sovereign prerogatives as all other States have in the Gulf of Mexico. The Act of Admission which describes the southern boundary of Louisiana as including all islands within three leagues of its coast should therfore be construed to include all submerged lands and waters within three leagues of its coast.

In our original brief we called attention to the fact that the Submerged Lands Act had made a different provision for the limits of State sovereignty on different coasts of the nation. It recognized the boundaries of States on the Great Lakes as extending to the international boundary which is considerably more than three leagues, and in some instances extends as much as 40 leagues from the shore. On the two great oceans the Submerged Lands Act limits the boundaries to three miles from coast. In the Gulf

of Mexico the boundary extends three leagues. These differences in the extent of sovereignty on different coasts can only be justified by the differences in location, and the character of the seas which adjoin these coasts. In other words Congress has classified the States in accordance with the nature of the seas where their coastal regions lie.

Equality and uniformity are not violated where a reasonable classification is made, but all parties in the same classification must be treated alike, or else the principle of equality is violated.

The equal protection clause of the Fourteenth Amendment may in this respect be compared to the equal footing clause in the Constitution.

In *Fort Smith L & T Co. v. Board of Improvement*, 274 U. S. 387, 391, 71 L.Ed. 1112, 1115, the Court cited a long list of cases supporting the following propositions:

> "The 14th Amendment does not prohibit legislation merely because it is special, or limited in its application to a particular geographical or political subdivision of the state . . .
>
> Nor need we cite authority for the proposition that the 14th Amendment does not require the uniform application of legislation to objects that are different, where those differences may be made the rational basis of legislative discrimination. . . ."

In the later case of *Caskey Baking Co. v. Virginia*, 313 U. S. 117, 121, 85 L.Ed. 1223, 1227, the Court

emphasized the point that those in the same class must be treated equally, saying:

> "As we have repeatedly held, the equal protion clause of the Fourteenth Amendment does not prevent a state from classifying business for taxation or impose any iron rule of equality. Some occupations may be taxed though others are not. Some may be taxed at one rate, others at a different rate. Classification is not discrimnation. It is enough that those in the same class are treated with equality . . ."

Further citation of authority on this point is of course unnecessary. The conclusion to be drawn from the authorities on the subject is that Louisiana is entitled to the same sovereignty in the Gulf of Mexico that other States have in that body of water.

The legislative history of the Submerged Lands Act indicates that the coast line from which the marginal sea belt is to be measured is not intended to be the shore line of the State. On page 4 of the House Report No. 215, 83rd Congress, 1st Session the Committee reported:

> "Section 2 (b) defines 'coastline' which is the baseline from which the State boundaries are projected seaward. It means not only the line of ordinary low water along the coast which directly contacts the open sea but it also means the line marking the seaward limit of inland waters.
>
> Inland waters include all ports, estuaries, harbors, bays, channels, straits, historic bays,

sounds, and also other bodies of water which join the open sea."

Reference can also be made to the official Report by the Senate Committee on Interior and Insular Affairs on S. J. Res. 13, same as R. R. 4198, finally enacted.

On p. 18 of Senate Report 133, 83rd Congress, 1st Session, the Committee stated with regard to the definition of the term "coast line" that,

> "(12) The words 'which include all estuaries, ports, harbors, bays, channels, straits, historic bays, and sounds, and all other bodies of water which join the open sea' have been deleted from the reported bill because of the committee's belief that the question of what constitutes inland waters should be left where Congress finds it. The committee is convinced that the definition neither adds nor takes away anything a State may have now in the way of a coast *and the lands underneath waters behind it.* (Emphasis added)

The "lands underneath waters behind" Louisiana's coast line are those inland of the line of demarcation between the inland waters and the open sea as fixed by the United States pursuant to the Act of February 19, 1895 (28 Stat.672, 33 U. S. C. 1351), and as adopted by Louisiana in Act 33 of 1954. See original Brief pages 119-131.

Evidence Is Admissable In Support of Louisiana's Pleas of Acquiescence, Prescription and Estoppel

In closing we desire to supplement briefly the argument made on pages 131 to 141 of our original brief concerning Louisiana's pleas of acquiescence, prescription and estoppel. These pleas are not necessarily directed at the United States, although as a matter of principle there is no reason why the Federal Government should not be subject to the effect of such pleas. As a matter of fact these pleas are primarily supported by the principles of international law which permit a coastal State to acquire the sub-soil, sea-bed, and resources of the Continental Shelf by effective occupation thereof. This principle of international law is covered by the argument presented on pages 85 to 95 inclusive of Louisiana's original brief, and is more fully discussed in the Appendix filed with that brief (Section B, pages 38 to 51 inclusive). It must be remembered that the United States was never in possession of the Continental Shelf offshore from Louisiana, and never made any claim thereto until after the State through its Lessees had explored the sea-bed of the Gulf of Mexico for minerals, and had begun to produce oil and gas therefrom in large quantities. On the contrary the State of Louisiana had exercised jurisdiction and had effectively occupied the bed of the Gulf far out on the Continental Shelf in the manner of the cultivation and taking of shrimp, oysters and other sedentary fisheries for a long period of time, as well as for the

exploration, development and production of minerals since the year 1920.

A hearing should be afforded the State to take the testimony of witnesses concerning Louisiana's possession of the Continental Shelf in support of the above mentioned pleas, and as an aid in interpreting the act admitting Louisiana to the Union.

CONCLUSION

Lousiana submits that the former decision of this Court in *United States v. Louisiana*, December 11, 1950 is not res judicata in the present controversy. In view of the Submerged Lands Act and the Outer Continental Shelf Lands Act of 1953, the entire subject matter of this controversy should be reconsidered and this case decided in the light of this subsequent legislation, because the theory on which the former decision was based is contrary to the rationale of these later Acts of Congress.

This controversy involves an interpretation of the Submerged Lands Act and the Outer Continental Shelf Lands Act, as well as provisions of the Constitution and Treaties of the United States, relating to the national and State boundaries in the sea, and the respective limits of sovereign power and dominion of the federal and state governments. These are questions for the Court, and are not to be decided on the basis of executive statements of policy or fact, especially where such statements ignore the generally accepted meaning of

words employed in the laws or treaties concerning these questions, and do not take into consideration well known facts to the contrary.

Prior to the passage of the Acts of Congress in 1953 the United States has uniformly asserted a three league national maritime boundary in the Gulf of Mexico, and has recognized the fact that the States bordering on the Gulf have boundaries to that extent. These facts are found in the words of Treaties and Congressional Acts, and cannot be modified or controverted by diplomatic opinions or statements of officials of the State Department of the federal government. Louisiana is entitled to the same sovereign rights and prerogatives in the marginal sea and is entitled to be maintained on an equal footing therewith other Gulf Coastal States.

The claim asserted by the Attorney General that the United States has "extra-territorial sovereignty," to the exclusion of the coastal states, is repugnant to the principles of our republican form of government, and has no basis either under the constitution or in international law, and should be rejected by the court.

Government counsel is anxious for this court to protect the principle of the freedom of the seas, yet he asserts extra-territorial rights to the edge of the continental shelf. The existence of a maritime boundary to the limits of the continental shelf is no more violative of the principle of the freedom of the seas than is the so-called extraterritorial rights that plaintiff's counsel claims to champion.

The Outer Continental Shelf Lands Act by asserting jurisdiction, control, and power of disposition over the entire Continental Shelf has declared the national maritime boundary to include that area. Since the boundaries of the continental United States and of the States of the Union are co-terminous and co-extensive, the boundaries of the States must coincide with the maritime boundary of the nation.

Within the extended maritime boundaries of the nation the United States can only exercise those powers conferred on it by the Constitution. To the extent that the Acts of Congress deny State ownership of the submerged lands within this area they violate Louisiana's constitutional rights, and also violate the trust whereby the United States acquired this territory for the benefit of the State.

The basis in international law for any claim to the sub-soil and sea-bed of the Continental Shelf rests upon long continued possession by the coastal state with the acquiescence of the family of nations. Louisiana has exercised such effective occupation of the Continental Shelf as to confer on it title to the soil and the resources of that area.

In order to fully develop these facts, Louisiana is entitled to take testimony of witnesses and to present relevant documentary evidence. In the present state

of the record there is no basis for the plaintiff's motion for judgment.

Respectfully submitted,

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I,.....one of the attorneys for the State of Louisiana, defendant herein, and a member of the Bar of the Supreme Court of the United States, certify that on the.....day of ....., 1957, I served copies of the foregoing Reply to Brief of the United States on Motion for Judgment, by leaving copies thereof at the offices of the Attorney General and of the Solicitor General of the United States, respectively, in the Department of Justice Building, Washington, D. C.

.....

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In the Supreme Court of the United States

OCTOBER TERM, 1956

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA

BRIEF FOR THE UNITED STATES IN REPLY TO LOUISIANA'S OPPOSITION TO MOTION FOR JUDGMENT, AND IN OPPOSITION TO LOUISIANA'S MOTION TO TAKE DEPOSITIONS

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Mississippi Enabling Act, 3 Stat. 348	13, 26
Outer Continental Shelf Lands Act, 67 Stat. 462, 43 U. S. C. (1952 ed.) Supp. III, 1331–1343	4, 6, 7
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Treaty with Mexico of 1828, 8 Stat. 372 17

Treaty of Limits with Spain, February 22, 1819, 8 Stat. 252 ..... 17, 20

Treaty with Great Britain, September 3, 1783, 8 Stat. 80, 82 24

Treaty with Grea Britain, Oct. 20, 1818, Art. 1, 8 Stat. 248, 249 14

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3 Cong. Globe (24th Cong., 2d Sess.) 45 18

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18 Fed. Reg. 2556 25

Federal Rules of Civil Procedure:

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1 Hackworth, *Digest of International Law* (1940) 640–641 17

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7 Journals of Congress (1800) 185, 186 24

21 Journals of the Continental Congress (1912) 1152, 1154 24

Letter from James Monroe, Secretary of State, to Luis De Onis, Spanish Minister, January 19, 1816 (*American State Papers*, 4 Foreign Relations 424, 425) 19

2 Margry, *Découvertes et Établissements des Français dans L'Ouest et dans le Sud de L'Amérique Septentrionale* (1877):

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In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 11, Original

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA

BRIEF FOR THE UNITED STATES IN REPLY TO LOUISIANA'S OPPOSITION TO MOTION FOR JUDGMENT, AND IN OPPOSITION TO LOUISIANA'S MOTION TO TAKE DEPOSITIONS

INTRODUCTION

Louisiana's brief expounds the State's contentions as set forth in its answer, with little or no reference to the comments on them contained in our opening brief. Our opening brief thus stands substantially unanswered; we believe that it disposes of all the State's basic contentions, and we shall not attempt to retrace the same ground here. However, the State's brief does contain some amplifying and subsidiary material which we consider unsound and which seems to justify additional comment. Our discussion here will follow the order of Louisiana's brief, with the addition of a final section addressed to Louisiana's motion to take depositions.

ARGUMENT

I. THE COASTAL STATES HAVE NO TITLE TO THE CONTINENTAL SHELF EXCEPT AS CONFERRED BY THE SUBMERGED LANDS ACT

Louisiana asserts that in *United States* v. *California*, 332 U. S. 19, and *United States* v. *Louisiana*, 339 U. S. 699, "this Court did not undertake to pass upon the matter of title." The reason for that forbearance is said to have been that "The Court was then without the benefit of a declaration by Congress as to the extent of American territorial jurisdiction." (Brief, 17.) Now, it is said, Congress has supplied that lack, making the dissenting rather than the majority opinions in those cases the authoritative precedents (Brief, 36). That proposition is unsound in every particular.

First, the *California* and *Louisiana* cases did most specifically pass upon the matter of title. The first paragraph of the decree in *United States* v. *Louisiana*, 340 U. S. 899, provides:

> 1. The United States is now, and has been at all times pertinent hereto, possessed of paramount rights in, and full dominion and power over, the lands, minerals and other things underlying the Gulf of Mexico, lying seaward of the ordinary low-water mark on the coast of Louisiana, and outside of the inland waters, extending seaward twenty-seven marine miles and bounded on the east and west, respectively, by the eastern and western boundaries of the State of Louisiana. *The State of Louisiana has no title thereto or property interest therein.* [Emphasis added.]

The decree in *United States* v. *California*, 332 U. S. 804, 805, was in the same terms, except that the area there in dispute extended seaward only three miles. It is impossible to conceive a more direct and specific adjudication that the State had no title. So far from withholding decision because of uncertainty over the location of the boundary, the Court in the *Louisiana* case clearly pointed out that the location of the boundary was immaterial to the decision, saying (339 U. S. at 705):

> If, as we held in California's case, the three-mile belt is in the domain of the Nation rather than that of the separate States, it follows *a fortiori* that the ocean beyond that limit also is. The ocean seaward of the marginal belt is perhaps even more directly related to the national defense, the conduct of foreign affairs, and world commerce than is the marginal sea. Certainly it is not less so.

Next, it is not true that Congress has defined the national maritime boundary by subsequent legislation. The Submerged Lands Act, 67 Stat. 29, 43 U. S. C. (1952 ed.) Supp. III, 1301–1315, contains no direct statement on the subject. Inferentially, it adopted the existing three-mile rule, by fixing that as the general extent of the submerged land granted to the States as being within their boundaries. The additional provision, that Gulf States could obtain submerged land out to three leagues if they could prove that they had boundaries that far out when they entered the Union or if such boundaries were thereafter approved by Congress, did not reflect a Congressional view that

such boundaries were possible; it was merely a concession to the protests of the Gulf States that this Court, rather than Congress, was the proper forum for settling a dispute as to the existing state of affairs. See the Government's opening brief, pages 27–32. And the Outer Continental Shelf Lands Act, 67 Stat. 462, 43 U. S. C. (1952 ed.) Supp. III, 1331–1343, did not extend the national boundary but rather asserted special rights and interests of the United States in the continental shelf adjoining but beyond its boundaries. See the Government's opening brief, pages 85–97.

Finally, even if the national maritime boundary had been extended, and if that had effected or permitted a corresponding extension of State boundaries, still Louisiana would not have acquired thereby any additional proprietary rights in the seabed. It was already *res judicata* between the parties that the right to exploit the resources of the seabed belonged to the United States as an attribute of national sovereignty, and not to the State as an attribute of State sovereignty. The State had no such rights in the seabed within its former limits; extension of its limits would not enlarge its rights in that respect. The rights adjudicated to the United States by this Court could pass to the State only by Congressional grant, and Congress has granted only three miles, or up to three leagues if the State can prove that it had such a boundary when it entered the Union or approved by Congress before May 22, 1953.

Louisiana asserts (Brief, 19) that the Submerged Lands Act was not a *grant* but rather was a recognition of a pre-existing title in the State. It supports

this by two propositions: that Congress called the act one of restitution, and that it was measured by existing State boundaries, which the State calls "a present recognition of a previously existing title." A reading of the Congressional committee reports to which the State refers (Brief, 25–26; Appendix 8–37) shows no more than that the committees believed that it would be sound and equitable policy to establish title, within State boundaries, as it had been supposed in many quarters to be before the decisions of this Court in the *California* and *Louisiana* cases. A grant is not the less a grant because motivated by considerations of fairness or public policy. In citing reference to existing State boundaries as a recognition of existing State title, Lousiana confuses territorial jurisdiction with proprietary right. The effect of the Submerged Lands Act was to transfer to each State, within the limits of its existing territorial jurisdiction, a proprietary right which had theretofore belonged to the United States as an attribute of national sovereignty. It was as a grant of federal property that the Submerged Lands Act was sustained by this Court. *Alabama* v. *Texas*, 347 U. S. 272.

From the premise that the Submerged Lands Act was a "recognition" of title in the State rather than a grant to it, Louisiana leaps to the conclusion that it applies to the entire continental shelf. But that by no means would follow. The Submerged Lands Act is clearly limited in terms to areas within State boundaries, not more than three miles from the coast (or three leagues, if an historic boundary at

that distance should be proven). Sections 2 (b), 3 (a), 4; 43 U. S. C. (1952 ed.) Supp. III, 1301 (b), 1311 (a), 1312. Even assuming that the Act is a "recognition" of existing State title, Congress, which could have stood on this Court's judgment that the State had no title, clearly had power to limit the area in which it would "recognize" State title as existing. That it intended to impose such a limit, whatever the nature of the Act may be, is equally clear, both from the terms of the Act itself and from the provisions of the Outer Continental Shelf Lands Act, contemporaneously enacted (67 Stat. 462, 43 U. S. C. (1952 ed.) Supp. III, 1331–1343), which provides for exclusive federal control of the submerged lands seaward of the limits described in the Submerged Lands Act. The case of *Superior Oil Company* v. *Fontenot*, 213 F. 2d 565 (C. A. 5), certiorari denied, 348 U. S. 837, cited by Louisiana (Brief, 19–24) as recognizing that the Outer Continental Shelf Lands Act subjected the outer continental shelf to the same rules as inland waters, did nothing of the sort. It merely held that, as between the State and its lessee, rights acquired by the State under the Submerged Lands Act, within the three mile limit must be considered retroactive.

Louisiana urges the Court (Brief, 30–36) to renounce the theory on which it decided *United States* v. *Louisiana*, 339 U. S. 699. But whatever might be the views of the Court as to such a policy with respect to States other than California, Louisiana and Texas, as to those three States we have not merely a legal

theory to be followed as *stare decisis*, or overruled if the Court be so advised; as to them, we have judgments which have become final. As to them, the applicable principle is not merely *stare decisis*, but also *res judicata*, and that principle stands as an absolute bar to any reconsideration now.

II. LOUISIANA'S TITLE DOES NOT EXTEND TO THE EDGE OF THE CONTINENTAL SHELF

Louisiana argues (Brief 37–47) that Presidential Proclamation No. 2667, 59 Stat. 884, asserting jurisdiction of the United States over the resources of the seabed of the continental shelf, and the Outer Continental Shelf Lands Act, 67 Stat. 462, 43 U. S. C. (1952 ed.) Supp. III, 1331–1343, asserting exclusive federal jurisdiction over the seabed of the outer continental shelf, have established the title of the State thereto. This paradoxical result is reached by asserting that those actions extended the national boundary; that the State boundary followed automatically; that the State's occupancy of the area is the only basis for the United States' claim to it; and that the United States claim it through the State, having acquired it in trust for the State as part of the Louisiana Purchase. This reasoning is confused. Nothing acquired from France by the Louisiana Purchase is claimed by the United States "through" the States; on the contrary, they claim through the United States which created them. If the area was acquired from France by treaty, the State's occupation of the seabed is not "the only basis in international law" for the claim by

the United States (Brief, 44–45).[1] And if the State's boundary was extended into the area as a result of a federal boundary extension (Brief, 38), again the State is obviously claiming through the United States rather than conversely as the State asserts.

We need not pause to unravel these confusions further, for the entire matter is irrelevant. The claims of the United States on the outer continental shelf do not amount to a boundary extension (see the Government's opening brief, pages 85–97). But even if they did, and if State boundaries were extended correspondingly, still the State would not have title to the seabed. Title to the seabed, as distinguished from the beds of inland waters, is not an attribute of State sovereignty. *United States* v. *Louisiana*, 339 U. S. 699. It is *res judicata* that the State has no title there unless it has acquired it from the United States since 1950. The only title the State has acquired from the United States is limited to three miles from the coast (or three leagues if the State can prove that it had a boundary of that extent when it entered the Union or approved by Congress before May 22, 1953). Submerged Lands Act, secs. 2 (b), 3 (a), 4; 43 U. S. C. (1952 ed., Supp. III, 1301 (b), 1311 (a), 1312.

[1] The actual basis for the federal claim to the continental shelf beyond territorial waters is the mere assertion of such claim, announced to the world as an act of external sovereignty by Presidential Proclamation No. 2667 and by the Outer Continental Shelf Lands Act. It has not been challenged by other nations, and certainly its international validity cannot be questioned by a State of the Union.

III. THE SUBMERGED LANDS ACT AND OUTER CONTINENTAL SHELF LANDS ACT DO NOT VIOLATE ANY CONSTITUTIONAL RIGHTS OF THE STATE OF LOUISIANA

Louisiana argues (Brief, 47–64) that under the treaty of the Louisiana Purchase the United States was obliged to incorporate the purchased territory into the Union according to the principles of the Federal Constitution, that constitutional principles require that the seabed of the continental shelf be given to the State, and that the Submerged Lands Act and Outer Continental Shelf Lands Act are unconstitutional to the extent that they retain federal control over such seabed. As Louisiana sums up the point (Brief, 63), "Louisiana in this case asks this Court to preserve its right to property which is an attribute of State sovereignty, and to protect the State from trespass by the United States."

The short answer is that this Court has already decided that under the Constitution the particular property here involved is *not* an attribute of State sovereignty, but is an attribute of national sovereignty. *United States* v. *Louisiana*, 339 U. S. 699. The acts of Congress cannot be "unconstitutional" for adhering to the situation which the Constitution itself created. The fact that Congress relinquished the federal rights to the State within certain limits gives the State no rights beyond those limits.

IV. LOUISIANA'S HISTORIC BOUNDARY DID NOT EXTEND TO THE 27TH PARALLEL

Louisiana's claim to a boundary at the 27th parallel rests solely on the terms of La Salle's proclamation of April 9, 1682; we are not given a single subsequent reference to that line in the whole history of Louisiana. As we pointed out in our opening brief (pages 111–114), the terms of the proclamation and the *procès-verbal* embodying it clearly show that La Salle mistakenly believed that he was at the 27th parallel at the time. Without discussion, the State now rejects the possibility of such an error, on the ground that determination of latitude is easy (Brief, 79). Be that as it may, La Salle's own writing shows that he determined it wrongly.

The proclamation and *procès-verbal* are not the only evidences of La Salle's error, nor was that the only time that he mistook a latitude. In a letter written at another time, he referred to the final reach of the Mississippi as running "to the East or at most to the South-East, taking this course at least one hundred twenty leagues, from the 30th *as far as the 27th degree, where it discharges into the sea* * * *."[2] [Emphasis added.]

In the same letter, he spoke of two Indian villages where he had stopped on the Mississippi, "one situated at 28 degrees or thereabouts of north latitude,

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[2] "* * * à l'Est ou au plus au Sud-Est, faisant cette route au moins cent vingt lieues, depuis le 30e jusqu'au 27e degré, où il se descharge dans la mer * * *." 2 Margry, *Découvertes et Établissements des Français dans L'Ouest et dans le Sud de L'Amérique Septentrionale* (1877) 199.

and the other at 30 degrees * * *."[3] The 28th parallel is about 60 nautical miles in the Gulf south of the southernmost mouth of the Mississippi.

Earlier in the same letter, describing the area near the mouth of the Ohio river, La Salle said:

> The Chucagoa * * * is the river that we call the river Saint-Louis. The Ohio river is one of its branches, which receives two others of considerable size before falling into the Saint-Louis river * * *. The Takahagane live on the north bank of the Chucagoa, about 32 degrees of north latitude; the Cicaca in the lands about 30 degrees and a half to the south of the same river, almost north and south of the mouth of the river of the Illinois in the Colbert river * * *.[4]

Without attempting to identify precisely the location referred to, we can see, from the fact that the Ohio actually enters the Mississippi (Colbert) at the 37th

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[3] "* * * l'un situé à 28 degrez ou environ de latitude nord, et l'autre à 30 degrez * * *." *Ibid.*, 198.

[4] "Le Chucagoa * * * est le fleuve que nous appelons le fleuve Saint-Louis. La rivière Ohio est une de ses branches, qui en reçoit deux autres bien considérables avant que de tomber dans le fleuve Saint-Louis * * *. Les Takahagane habitent sur le bord septentrional du Chucagoa, environ les 32 degrez de latitude septentrionale; les Cicaca dans les terres, à environ 30 degrez et demy au sud de ce mesme fleuve, presque nord et sud de l'emboucheure de la rivière des Ilinois, dans le fleuve Colbert * * *." *Ibid.*, 196.

The French nomenclature for these confluent rivers was not uniform. Sometimes, the name Saint-Louis was applied to the Ohio as far as the Mississippi, but at other times the Saint-Louis was said to flow into the Illinois which in turn emptied into the Mississippi. See, *e. g.*, Father Zenobe's letter of June 3, 1682, *ibid.*, 206.

parallel, that La Salle was substantially in error regarding latitude.

Louisiana's reliance on De Fer's map of 1705 (Brief, 80–81) is equally unjustified. The dotted line in the water, which Louisiana treats as a boundary, was not confined to coasts claimed by France, but extended along the entire depicted coast, from below Tampico, Mexico, to above Cape Romain, South Carolina. The legend inscribed along it, "Les Gros Bastimens naproche pas la coste ny ayant de fond que Jusque a ces points," means simply, "Large ships are not to approach the coast, there being depth only as far as these points [dots]," and was nothing more than a navigational warning.[6] (As bearing on the accuracy of early determinations of latitude, it may be noted that this map shows the Tropic of Cancer as almost touching the Cape of Florida and about 30 leagues north of Cuba. In fact, the Tropic of Cancer, which is at 23° 27′ North, is about 30 leagues south of Florida and 7 north of Cuba.)

Louisiana takes the position (Brief, 67–68, 120, 123) that the Act of April 8, 1812, 2 Stat. 701, admitting it to the Union, which described the State as "bounded by the said gulf * * * including all islands within three leagues of the coast," should be construed as describing a three-league marginal belt of sea and submerged land. We have answered that contention in our opening brief, pages 32–38. However, in addition to what was said there we may point out that

[6] The fact that the map showed no inland political boundaries is a further indication that the line drawn opposite the shore was not intended to represent a political boundary.

similar language was used in the enabling acts for Mississippi and Alabama, and that there are strong reasons for believing that it was not intended that water or submerged land should be included thereby. The Mississippi enabling act, March 1, 1817, 3 Stat. 348, described the State as "including all the islands within six leagues of the shore"; similarly, the Alabama enabling act, March 2, 1819, 3 Stat. 489, 490, described the State as "including all islands within six leagues of the shore." It would certainly be surprising to find Congress at that late day claiming a marginal belt of *six* leagues, particularly in view of the fact that only a few years before it had limited Louisiana to islands within *three* leagues. Alabama, at least, has not construed that as a grant of a six-league marginal belt. In its brief in support of its motion for leave to file its complaint in *Alabama* v. *Texas*, 347 U. S. 272, Alabama said (pages 65–66):

> By joining the Union, Alabama became bound by the actions of the United States in the conduct of its foreign relations, and as a result, became bound by the rule, supported by the United States, that three nautical miles were the maximum limit of the width of the maritime belt which any nation, including the United States, might claim as part of its territorial boundaries. As a member of the Union, Alabama therefore has made no claims to boundaries including a maritime belt of more than three nautical miles in width.

Other subjects discussed by Louisiana under the heading of its historic boundary (Brief, 64–83) are dealt with elsewhere herein or in our opening brief.

As to the claim that the terms of the Louisiana Purchase required the United States to hold the offshore submerged lands in trust for the State of Louisiana (Brief, 66–67), see our opening brief at pages 98–101. As to the claim that ownership of the seabed passed to the State as an incident of State sovereignty (Brief, 67–73), see *supra,* pages 2–3, 8, 9, and our opening brief, pages 22–24.

V. LOUISIANA'S CLAIMS OF A BOUNDARY MORE THAN THREE MILES FROM THE COAST ARE NOT SUPPORTED BY INTERNATIONAL LAW

Louisiana cites (Brief, 83–84) various European treaties which it says recognized territorial boundaries extending seaward various distances ranging from three to 30 leagues. Excerpts from those treaties are set out in the Appendix to Louisiana's brief, at pages 89–102. Examination of them shows that they contain no reference to "boundaries" in the sea; in each instance the provision referred to is one granting or relinquishing a right of the subjects of one sovereign to fish within stated distances of coasts owned by the other. The power of nations to enter into such treaties has never been questioned, but they establish nothing more than personal privileges and obligations between the parties. For example, by the treaty with Great Britain of October 20, 1818, the United States renounced the right of its citizens to fish "within three marine miles of any of the coasts, bays, creeks, or harbours, of his Britannic Majesty's dominions in America" with certain exceptions. Art. 1, 8 Stat. 248, 249. In the North Atlantic Coast Fisheries Arbi-

tration, this was held to include, and to be effective as to, all "bays" whether or not they were so large as to be outside the territorial jurisdiction of Britain. *Protocols of the North Atlantic Coast Fisheries Arbitration* (1910) 121, 1 *North Atlantic Coast Fisheries Arbitration* (S. Doc. No. 870, 61st Cong., 3d Sess.), Award of the Tribunal, 92–93. Moreover, even if the treaties referred to by Louisiana did purport to establish territorial boundaries, they would only be effective between the parties and would not show any general right under international law to claim such boundaries against the world.

Louisiana next refers (Brief, 85–95) to the principle that a nation may by occupancy acquire exclusive rights in sedentary fisheries such as pearl fisheries, and claims by its occupancy of the continental shelf to have brought itself within that principle. The claim shows some misunderstanding as to the issues now before the Court. As between the United States and the State, the right to exploit the resources of the seabed belongs to the United States, regardless of where the State boundary may be (*United States* v. *Louisiana*, 339 U. S. 699), except to the extent that the United States has relinquished it to the State since 1950. The only such relinquishment has been by the Submerged Lands Act, and is limited to the State boundary, and not more than three miles from the coast, unless the State can show that its boundary extended farther when it entered the Union, or that a greater extent has been approved by Congress before May 22, 1953, in which case the federal relinquishment may extend as far as three leagues, but no farther

in any case. Sections 2 (b), 3 (a), 4; 43 U. S. C. (1952 ed.) Supp. III, 1301 (b), 1311 (a), 1312. Whatever the State of Louisiana has done by way of occupancy of the seabed has necessarily been done since it entered the Union, as the State did not exist before that time. There is no claim that any boundary established by such occupancy has been approved by Congress. This disposes of the point; all else is irrelevant. We may observe, however, that any preemption of rights in the bed of the high seas, as against other nations, must necessarily be accomplished by the National Government, which alone has external powers, and not by one of the constituent States of the Union acting alone. And against the United States, the State can of course acquire no rights there by prescription. *United States* v. *California*, 332 U. S. 19, 39–40.

VI. THE UNITED STATES HAS NOT APPROVED STATE OWNERSHIP OF A THREE-LEAGUE BELT IN THE GULF OF MEXICO

Louisiana argues (Brief, 96–109) that the United States has consistently approved State ownership of a three-league belt in the Gulf of Mexico. This subject was fully discussed in our opening brief, pages 39–62, 138–148, where we showed that, on the contrary, the United States has always insisted on a three-mile limit in the Gulf of Mexico as elsewhere. We believe that what we said there fully answers this part of Louisiana's brief, and we shall not add to it here, except to correct certain errors in Louisiana's presentation of its argument.

Louisiana says (Brief, 99) that the Treaty of Limits of 1819 between the United States and Spain "was the basis for the fixing of this corner at the mouth of the Sabine 'three leagues from land' in the Boundary Convention between the United States and the Republic of Texas in 1838." The fact is that the boundary convention with Texas did *not* fix a corner three leagues from land. It provided merely that the boundary established between the United States and Mexico in 1828 was binding as to Texas, and that a joint commission should mark "that portion of the said boundary which extends from the mouth of the Sabine, where that river enters the Gulph of Mexico, to the Red River." 8 Stat. 511. The Mexican treaty of 1828 had provided (8 Stat. 372, 374), as did the previous treaty of 1819 with Spain (8 Stat. 252, 254), that the boundary should begin "on the gulf of Mexico, at the mouth of the river Sabine, in the sea."

Louisiana also states (Brief, 104) that, when the United States protested the Mexican boundary extension of 1935, Mexico pointed to the three-league provision of the Treaty of Guadalupe Hidalgo in justification, to which the United States replied on May 23, 1936, that that treaty related only to the Gulf of Mexico, whereas the protest was only against a boundary extension in the Pacific. That statement is inaccurate. The letter of May 23, 1936, was a letter of instructions from the Assistant Secretary of State to the American Ambassador to Mexico. 1 Hackworth, *Digest of International Law* (1940) 640–641. The reply to the Mexican Government, by letter of June 3,

1936, was in the same terms as the letter of instructions, however, except for minor verbal changes. It is printed in full in 99 Cong. Rec. 3623; the most relevant portions are printed in our opening brief, pages 54–56. It does not in any way limit the protest to the Pacific coast. On the contrary, it makes it perfectly clear that the protest relates equally to the Gulf of Mexico. It says that the provision of the Treaty of Guadalupe Hidalgo "relates only to the boundary line at a given point," and points to the fact that when Great Britain protested against the treaty provision on the ground that "the Gulf of Mexico is a great thoroughfare of maritime commerce" the United States replied that the treaty provision was meant only for the mutual convenience of the parties and was not meant to question the rights of other nations under the law of nations. That necessarily referred to rights in the Gulf of Mexico, as none other was in question. The essence of the American reply to Mexico was that the provision extending the dividing line between the two countries three leagues into the Gulf was merely for the purpose of preventing smuggling at the boundary, and did not in any way justify claiming a three-league belt along the coast.

Louisiana misquotes (Brief, 104) a statement by President Jackson, giving it as "The title of Texas to the territory *sea* claims is identified with her independence." [Emphasis added.] This gives an erroneous impression that Jackson was speaking of the maritime boundary. What he actually said was, "the territory she claims." 3 Con. Globe (24th Cong., 2d

Sess.), 45. In its context, the statement has no significance for present purposes. The subject under discussion was the proposed recognition of the Republic of Texas as independent from Mexico. It was generally anticipated that, after achieving independence, Texas would join the United States. Jackson was warning that, under those circumstances, a too-precipitate recognition of Texan independence by the United States might be construed by other powers as a mere expedient to create a Texan title which the United States could then assume. It did not at all mean that recognition of Texas would amount to a recognition of the validity of any particular Texas claim.

Louisiana quotes (Brief, 105) a statement by Senator Walker to the effect that in connection with his resolution advising recognition of Texas he had claimed her boundaries as the ancient boundaries of Louisiana. That statement referred to the fact that the United States at one time claimed that Texas was part of the province of Louisiana as it was originally possessed by France, ceded to Spain, retroceded to France and finally transferred to the United States.[6]

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[6] See, *e. g.*, the letter of January 19, 1816, from James Monroe, Secretary of State, to Luis De Onis, the Spanish Minister (*American State Papers*, 4 Foreign Relations 424, 425):

"It is known to your Government that the United States claim by cession, at a fair equivalent, the province of Louisiana, as it was held by France prior to the treaty of 1763, extending from the river Perdido, on the eastern side of the Mississippi, to the Bravo or Grande, on the western. To the whole territory within those limits, the United States consider their right established by well-known facts and the fair interpretation of treaties."

It had nothing to do with the three-league boundary claimed by the Republic of Texas; that claim was not made until December 19, 1836, whereas the American pretensions to Texas as part of the Louisiana Purchase were relinquished by the Treaty of Limits with Spain, February 22, 1819, 8 Stat. 252, fixing the western limit of Louisiana at the Sabine.

Louisiana likewise says (Brief, 105) that the territorial claims of Texas were recognized by treaties which it entered into with France on September 25, 1839 (2 Gammel, *Laws of Texas,* 655; Laws of the Republic of Texas, 5th Cong., 1840–1841, App., 1), The Netherlands on September 18, 1840 (2 Gammel, *Laws of Texas,* 905; Laws of the Republic of Texas, 7th Cong., 1842–1843, App., XXI) and Great Britain on November 13, 1840 (2 Gammel, *Laws of Texas,* 880; Laws of the Republic of Texas, 7th Cong., 1842–1853, App., I). A reading of those treaties discloses no reference whatever to the territorial extent or boundaries of the Republic of Texas, maritime or otherwise. As we pointed out in our opening brief, pages 140–142, recognition of a nation does not amount to recognition of its territorial claims.

Louisiana refers (Brief, 105) to the Florida Constitution of 1868 as having claimed a boundary five leagues in the Gulf of Mexico, citing 2 Thorpe, *American Charters, Constitutions and Organic Laws* 706, 734. While it makes no difference here, we may point out for accuracy that the Florida Constitution of 1868, as adopted by the people of Florida and as submitted to Congress, provided for a boundary *three* leagues in the Gulf of Mexico. H. Exec.

Doc. No. 297, 40th Cong., 2d Sess., 3; Florida Laws (1868) 193, 195; Bush, *Digest of the Laws of Florida* (1872) 1, 3; 3 Florida Statutes (1941) 178, 179; 25 Florida Statutes Annotated, 411, 413. We have no immediate explanation for the entirely different text printed by Thorpe. We have already pointed out in our opening brief, pages 145–147, that Congress did not approve the boundary provision of the Florida constitution.

Since Louisiana has failed to show any instance of approval by the United States of a three-league boundary for any State in the Gulf of Mexico, it is unnecessary to consider whether, if such a boundary had been recognized, "equal footing" would entitle Louisiana to a boundary of that extent.

Louisiana refers (Brief, 108) to the fact that the Submerged Lands Act recognizes boundaries extending more than three miles into the Great Lakes. That has no relevancy here; the Great Lakes are inland waters, as to which it has always been recognized that boundaries of bordering nations and States extend to the mid-line.

Louisiana also refers (Brief, 109) to the Submerged Lands Act as setting a three-league limit in the Gulf of Mexico. But, as we have already explained, that limit was set, not as an indication that Congress believed that such limits did or could exist, but as a concession to the demands of coastal States that they be allowed to litigate their claims to have such boundaries existing in the past. The claim then was that for Congress to deny them that opportunity would be arbitrary and confiscatory; the fact that they